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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

ALEXANDER ANOLIK
and
ANTHONY J. PALIK,

Petitioners,

V.

PHILIPPINE AIRLINES INCORPORATED
and
PACIFIC AIR LEISURE SERVICES

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I.

Did the appellate court so far depart from the accepted and usual course of judicial proceedings, or sanction such a departure by the trial court in this case, thereby warranting an exercise of this Court's supervisory power to correct significant and harmful procedural errors made by the trial and appellate courts, where the appellate court failed to state what standards were used by them to affirm the trial court's award of sanctions, and the trial court failed state how she applied the rules stated by her in her order granting sanctions?

II.

Did the appellate court so far depart from the accepted and usual course of judicial proceedings, or sanction such a departure by the trial court in this case, thereby warranting an exercise of this Court's supervisory power, where the appellate court failed to correct a significant and harmful procedural error committed by the trial court when she used a subjective standard to determine the existence of an improper purpose warranting sanctions and impermissibly weighed and determined the validity of certain facts alleged in the complaint?

III.

Should this Court exercise their supervisory powers and remand this case to the district court in order to correct a significant and material error that may exist in the record?

IV.

Were the Petitioners denied due process because the district court failed to hold a separate hearing on the defendants' Motion for Sanctions?

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14.1(b), the caption of the case on this Petition states the names of all parties hereto.

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CITATIONS TO OPINIONS AND ORDERS

Sag Try [*sic*] Sag, Inc., et al. v. Philippine Airlines, Inc., et al., 2003 WL 77213 (9th Cir. 2003, unpub.), affirming the order of sanctions imposed on June 5, 2001, by the United States District Court for the Northern District of California, J. Claudia Wilken presiding, in the case of Sig Tyr Sig, Inc., et al. v. Philippine Airlines, Inc., et al., No. C 00-03683 CW.

BASIS FOR JURISDICTION

The Petitioners, Alexander Anolik, Esq., and Anthony J. Palik, Esq., seek review by this Court of a judgment of the United States Court of Appeals for the Ninth Circuit, entered by them on January 9, 2003. Panel rehearing was denied by the appellate court on February 11, 2003. This Petition is brought pursuant to Section 1254(1) of Title 28 of the United States Code.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ETC.

Federal Rules of Civil Procedure, Rule 11 - See Appendix, pp. A-166 through A-168.

Federal Rules of Civil Procedure, Rule 12 - See Appendix, pp. A-169 through A-172.

STATEMENT OF THE CASE

For reasons unrelated to this case, Philippine Airlines was operating in receivership in the bankruptcy system in the Republic of the Philippines since 1998. Ancillary to that foreign bankruptcy, Philippine Airlines sought the protection of the United States Bankruptcy Court for the Northern District in 1998 under case no. 98-32705-TC. While Philippine Airlines remained under the control of the Bankruptcy Court, the Plaintiff in the underlying lawsuit, *Sig Tyr Sig, Inc.*, d.b.a. *Sextant Travel Services*, saw the need for civil redress from Philippine Airlines. To that end, Sextant Travel obtained an order from the bankruptcy court allowing Sextant to sue Philippine Airlines in the Northern District Court. This order, filed on October 5, 2000, permitted Sextant to sue Philippine Airlines within

certain limitations. (Appendix ["App."] 7-16)

In accordance with the bankruptcy court order of October 5, 2000, Sextant Travel filed a verified complaint against Philippine Airlines and another travel agency on October 5, 2000 in the Northern District under case CV-00-03683-CW. This complaint was brought under the grant of "federal question" jurisdiction provided by 28 U.S.C. § 1331, and alleged seven causes of action: *Sherman Act*, *Robinson-Patman Act*, California's *Cartwright Act*, California unfair trade practices, *RICO*, intentional interference with economic relations, interference with prospective economic relations, and demanding injunctive and declaratory relief. Any state-based causes of action were brought where they formed part of the same "case or controversy" under Article III of the United States Constitution. (App. 17-30)

Philippine Airlines responded to the complaint with a motion to dismiss under F.R.Civ.P. Rule 12 (b)(6). After a hearing on the motion (App. 31-56), the District Court granted Philippine Airlines' Rule 12 motion by dismissing the complaint with leave to amend in a written order on February 2, 2001. (App. 57-70)

Sextant Travel responded by filing a first amended verified complaint on February 12, 2001. This revised complaint alleged six causes of action. The Plaintiff eliminated the permanently dismissed *Robinson-Patman Act* claim and added significant substantive revisions to the original claims pursuant to the court's order of dismissal with leave to amend. (App. 71-94)

Philippine Airlines again responded with a motion to dismiss under Rule 12 (b)(6). Considering arguments from all parties (App. 95-135), the District Court again granted the Rule 12 application by dismissing the first amended complaint. This time, however, the Court refused to grant leave to amend in its order of June 5, 2001. (App. 136-146)

In conjunction with its second Rule 12 application, Philippine Airlines also applied for sanctions under Rule 11. In an order also dated June 5, 2001, the District Court

granted the Rule 11 application. (App. 147-154)

In a Judgment of Dismissal (App. 159-163) and Order Awarding Sanctions (App. 155-158), both filed on August 21, 2001, the District Court assessed sanctions totaling $60,000 against the Plaintiff and its Counsel. The court apportioned that amount with $40,000 going against the Plaintiff, Sextant Travel. The court split the remaining $20,0000 between the Attorney for the Plaintiff, Alexander Anolik, and his assisting attorney, Anthony Palik.

From that Rule 11 award, Attorneys Anolik and Palik appealed to the United States Court of Appeals for the Ninth Circuit. They filed a timely Notice of Appeal on 18 September 2001, pursuant to 28 U.S.C. § 1291. (App. 164-165)

On January 9, 2003, the appellate court affirmed the District Court's award of sanctions. (App. 3-5) On February 11, 2003, the appellate court denied the appellant's Petition for Rehearing (App. 6), and this Petition for Writ of Certiorari was filed therefrom.

ARGUMENT

I. PETITIONERS REQUEST THAT THIS COURT EXERCISE THEIR SUPERVISORY POWERS TO CORRECT SIGNIFICANT AND HARMFUL PROCEDURAL ERRORS MADE BY THE TRIAL AND APPELLATE COURTS, WHERE THE APPELLATE COURT FAILED TO STATE WHAT STANDARDS WERE USED BY THEM TO AFFIRM THE TRIAL COURT'S AWARD OF SANCTIONS, AND THE TRIAL COURT FAILED STATE HOW SHE APPLIED THE RULES STATED BY HER IN HER ORDER GRANTING SANCTIONS. WITHOUT THIS INFORMATION, IT IS NOT POSSIBLE FOR THE PETITIONERS TO DETERMINE THE CORRECTNESS OF THE TRIAL OR APPELLATE COURTS' DECISIONS OR HOW THEY MAY AVOID SANCTIONS IN THE FUTURE. AS SUCH, THE PETITIONERS ARE WITHOUT NOTICE OF THE REASONS FOR THEIR ALLEGED VIOLATION OF RULE 11.

"When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed." F.R.Civ.P.

Rule 11 (c)(3) [underlining added]. Moreover, when monetary sanctions are imposed, they must be "quantifiable with some precision." Loyd v. Schlag, (1989) 884 F.2d 409, 413 [underlining added].

In reviewing Rule 11 sanctions, this Court has stated they will review findings of historical fact under the clearly erroneous standard, the determination that counsel violated Rule 11 under a *de novo* standard, and the choice of sanction under an abuse of discretion standard. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 S.Ct. 2247, 2457, 110 L.Ed.2nd 359 (1990).

According to the aforementioned rules, an explanation of the sanctions award which is more than conclusory is required for meaningful appellate review. In addition, because a Rule 11 sanctions award is reviewable for abuse of discretion, the award must disclose how it was computed. As noted by the Ninth Circuit, "we must know to what we defer." Townsend v. Holman Consulting Company, (9th Cir. 1990) 914 F.2d 1136, 1144. The explanation must correspond to the amount, type and effect of the sanction: "Like a sliding scale, the degree and extent to which a specific explanation must be contained in the record will vary accordingly with the particular circumstances of the case, including the severity of the violation, the significance of the sanctions, and the effect of the award." Thomas v. Capital Security Service, Inc., 836 F.2d 866, 882 (5th Cir., 1998); In re Yagman, 79 F.2d 1165, 1184 (9th Cir., 1986).

In their memorandum opinion (App. 3-5), the appellate court simply stated their conclusions as identical to those arrived at by the trial court (App. 147-152), which were wholly conclusory. In her orders of dismissal and granting sanctions, the trial court may have stated the rules on which she relied for each, but an order of dismissal and an award of sanctions are not decided using identical standards, and she does not adequately explain her application of the sanction rules; she merely states her conclusions as those are based on her reasoning in the

dismissal order. Furthermore, in the appellate court opinion, there was no statement as to the standard of review applied to justify those conclusions.

Both the trial and appellate courts summarily based their decisions on (1) the alleged violation of the order of the bankruptcy court, and (2) the alleged frivolous nature of the complaint. For reasons which are argued later in this Petition, the Petitioners made every effort to comply with both the bankruptcy court's order permitting them to sue the defendants, as well as with the district court's first order of dismissal with leave to amend their complaint. Both the decisions of the trial court and the appellate court are conclusory and do not provide the Petitioners with notice of how they transgressed.

II. PETITIONERS REQUEST THAT THIS COURT EXERCISE THEIR SUPERVISORY POWERS WHERE THE APPELLATE COURT FAILED TO CORRECT A SIGNIFICANT AND HARMFUL PROCEDURAL ERROR COMMITTED BY THE TRIAL COURT WHEN SHE USED A SUBJECTIVE STANDARD TO DETERMINE THE EXISTENCE OF AN IMPROPER PURPOSE WARRANTING SANCTIONS AND IMPERMISSIBLY WEIGHED AND DETERMINED THE VALIDITY OF CERTAIN FACTS ALLEGED IN THE COMPLAINT.

In order for Rule 11 sanctions to be found, the complaint must be filed for an improper purpose, such as harassment, delay, or unnecessary expense; it must be filed without any non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; or it must be filed without evidentiary support. F.R.Civ.P. 11(b). Although the trial court stated "reasons" for a finding of sanctions in her order of June 5, 2001, those statements are merely conclusions and do not explain the rationale by which the rules on which she relied were applied. (App. 147-154)

Furthermore, when considering the "frivolousness" of a cause of action, if the cause of action can be sustained, it clearly could not be frivolous. Therefore, although dismissal does not by itself warrant sanctions (an error

apparently made by the trial court), an application of the standard for dismissal under F.R.Civ.P. Rule 12 (b)(6) demonstrates that the causes of action stated by the Plaintiff were sound, or at least not worthy of sanctions.

The rule for dismissal under Rule 12 (b)(6) has been stated by many courts, and their holdings can be summarized as follows: A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief (Ledbetter v. City of Topeka, 318 F.3d 1183 (10th Cir., 2003)); recovery may appear remote and unlikely on the face of a pleading, but that is not the test for dismissal for failure to state a claim (Bernheim v. Litt, 79 F.3d 318 (2d Cir., 1996)); all of the plaintiff's factual allegations are deemed true and any ambiguities must be resolved in the plaintiff's favor. Carter by Carter v. Cornwell, 983 F.2d 52 (6th Cir., 1993), *rehearing denied.*

A. The trial court does not adequately explain how she arrived at her conclusion that the causes of action alleged by the Petitioners were worthy of sanctions.

A court may impose Rule 11 sanctions on the signer of a paper "if either (a) the paper is filed for an improper purpose, or (b) the paper is 'frivolous.'" Townsend v. Holman Consulting Corp., 929 F.2nd 1358, 1362 (9th Cir.1991) (*en banc*). A paper reaches "frivolous" status if it is "both baseless and made without a reasonable and competent inquiry." *Id.*; Buster v. Greisen, 104 F.3rd 1186, 1190 (9th Cir. 1997).

The baseless or frivolous moniker holds if a competent attorney could not form a reasonable belief that a claim is warranted by existing law or a good faith argument for extension, modification or reversal of existing law. Rule 11 (b)(2); Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2nd 1531, 1538 (9th Cir. 1986). Courts look at both the "baseless" and "reasonable inquiry" determinations with an objective standard of

"reasonableness under the circumstances". See ***In re:*** Keegan Mgmt. Co., Securities Litigation, 78 F.3rd 431, 434 (9th Cir.1995), confirming *Townsend*'s "objective-objective" approach.

Either the improper purpose or frivolous ground suffices to sustain a sanction[1]. However, if a district court cites both grounds, the reviewing court must consider *both* on appeal because whether the subject paper is only frivolous or both harassing *and* frivolous could affect the nature of the sanction or the amount awarded as a result. Townsend v. Holman, *supra*, 929 F.2nd at 1362; Hudson v. Moore Business Forms, 836 F.2nd 1156, 1163-4 (9th Cir.1987).

Furthermore, a determination of improper purpose must be supported by a determination of frivolousness when a *complaint* is at issue. ***Townsend***, *supra*, at 1362.

> Although the "improper purpose" and "frivolousness" inquiries are separate and distinct, they will often overlap since evidence bearing on frivolousness or non-frivolousness will often be highly probative of purpose.
>
> The standard governing both inquiries is objective. [Zaldivar v. City of Los Angeles, 780 F.2d 823, 829 (9th Cir.1986)] With regard to complaints which initiate actions, we have held that *such complaints are not filed for an improper purpose if they are non-frivolous. Id.* at 832. Since subjective evidence of the signer's purpose is to be disregarded, *id.* at 829, the "improper purpose" inquiry subsumes the "frivolousness" inquiry in this class of cases. The reason for the rule regarding complaints is that the complaint is, of course, the document which embodies the plaintiff's cause of action and it is the vehicle through which he enforces his substantive legal rights. Enforcement of those rights benefits not only individual plaintiffs but may benefit the public, since the

[1] Rule 11(b)(1) and (2), respectively.

> bringing of meritorious lawsuits by private individuals is one way that public policies are advanced. As we recognized in *Zaldivar*, it would be counterproductive to use Rule 11 to penalize the assertion of non-frivolous substantive claims, even when the motives for asserting those claims are not entirely pure. *Id.* at 834. [Italics added.]

The absence of a rationale by the district court for reaching her conclusions is highly significant because the only time the district court inquires into the facts surrounding the Motion for Sanctions at the hearing on April 27, 2001, as opposed to those issues surrounding the sufficiency of the Complaint, is when she asked who was ultimately responsible for the case and about the identity of the contract attorney, Mr. Palik (App. 114). Although the Motion for Sanctions was mentioned in passing, no further inquiry was made as to the facts that would specifically relate to an application of Rule 11.

In addition to the lack of inquiry into the facts surrounding the Motion for Sanctions at the hearing on the defendants' second Motion to Dismiss, the plaintiff's counsel had assiduously amended the first complaint in order to bring it into strict compliance with terms of the district court's first order of dismissal on February 2, 2001. Without a rationale to explain her conclusions, it is impossible for the Petitioners to understand their error. In this regard, the district court found subsection (2) of Rule 11 violated

> [b]ecause Plaintiffs' claims in the [amended complaint] are dismissed under Rule 12 (b)(6) for the same reasons they were dismissed in the original complaint, ... The order dismissing the original complaint detailed the specific defects of the original complaint. ... [T]he Court warned Plaintiffs that if they filed an amended complaint that was subject to the same infirmities as the original complaint, the Court would consider sanctions for unnecessarily and vexatiously

continuing the proceedings. Despite this explicit warning, Plaintiffs have done just that. ...". (*Id.* at pp.6-7)

Was the court fair in its assessment of the amended complaint? The court invited the plaintiff to amend their original complaint, with the implied promise that, by adding sufficient factual allegations that could be honestly pleaded according to her specifications, the trial court would find the amended complaint facially sufficient, all the while threatening the punishment of sanctions for a failure to do so. To answer the question of the fairness of the sanctions award under these circumstances, we must look at the subject amended complaint in light of the court's criticisms of the original complaint. Then we must consider what the plaintiff offered the court at the hearing on the motion to dismiss.

1. Complaint Comparison

In regard to the causes of action pleaded, the amended complaint contained the same causes of action as the original, except for the original complaint's *Robinson-Patman Act* claim.

SHERMAN/CARTWRIGHT

Claims one and two of the amended complaint are for alleged violations of the *Sherman Antitrust Act* and California's *Cartwright Act*, a state claim similar in intent and operation to the federal *Sherman Act*. Because of their similarities, the district court dismissed the two claims in the original complaint for essentially the same reasons.

In her order dismissing the original complaint, the district court found the original complaint did not allege facts sufficient to show any anti-competitiveness or impact on inter-brand competition. In so doing, she posited that no restraint on trade was alleged because Philippine Airlines did not compete with Sextant Travel. Since the Plaintiff claimed at the hearing the ability to show that Philippine Airlines acted as an agent of its co-defendant and other "horizontal" competitors in squeezing the plaintiff out of the market, the Court granted leave to

amend.

The amended complaint corrected the original's defects by stating in detail how Philippine Airlines conspired with its co-defendant and other horizontal competitors to eliminate Sextant from the market and fix prices. The Plaintiff recited those facts in considerable detail in the *Sherman Act* claim and incorporated them into the *Cartwright Act* claim. It was the Petitioners' ultimate concern with this Court's decision in Business Electronics Corporation v. Sharp Electronics Corporation, 485 U.S. 717, 108 S.Ct. 1515, 99 L. Ed. 2d 808 (1988) that caused them to dismiss their antitrust causes of action, but only out of an abundance of caution. Petitioners still believe that, given the chance, they could have proved the facts necessary to state those causes of action, and they were prepared to later amend their complaint to restate those causes of action when the necessary facts had been discovered.

More specifically, in the Business Electronics case, this Court held that a vertical restraint of trade is not *per se* illegal under section one of the *Sherman Act* unless it includes some agreement on minimum price levels, and that, without such an agreement, a *per se* restraint on trade would not occur when terminating a dealer because of price cutting. However, in paragraph 14, subsection E. of their First Amended Complaint, the plaintiffs did allege that the defendants agreed, "sometime on or about May of 2000, that the [horizontal competitors] should be required to increase the minimum price at which they sell [Philippine Airline's] tickets," thereby satisfying the requirements of the Business Electronics case.[2] It was only after amending the complaint that the Petitioners obtained information that put proof of the price-fixing scheme into

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[2] In particular, the plaintiff was arguing that the facts alleged were sufficient to state a cause of action under the Sherman Act and that vertical price restraints would reduce inter-brand competition by facilitating the process of "cartelizing."

some doubt, causing them to dismiss the antitrust causes of action out of an abundance of caution. Despite this concern (and the dismissal of the antitrust causes of action), the complaint always alleged facts necessary to find that it was objectively sufficient and reasonably pleaded under the circumstances. There was never any indication by the Petitioners, either in the complaint or at the hearings, that they had not pleaded facts sufficient to state a non-frivolous cause of action on the antitrust claims. The trial court judge was never entitled to make a determination using a subjective standard as to whether she believed the facts alleged were true. The facts pleaded were sufficient on their face. Certainly, this cause of action should have survived both the motion to dismiss and the motion for sanctions.

UNFAIR PRACTICES

The plaintiff's original complaint's California law claim for unfair trade practices met with the court's disapproval because the court saw no competition between Philippine Airlines and the plaintiff and no competitive injury. (ER6, p.12) The court invited amendment if such a claim could be made.

The Plaintiff amended the claim with significant allegations of market division, price cutting, illegal rebates, threats and conspiracy involving Philippine Airlines and the other horizontal competitors sufficient to state a non-frivolous cause of action. The trial court judge was never entitled to make a determination as to whether she believed the facts alleged were true. The facts pleaded were sufficient on their face. Certainly, this cause of action should have survived both the motion to dismiss and the motion for sanctions.

RICO

The district court dismissed the original *RICO* claim noting that the plaintiff's allegation of extortion had no showing of property loss as support. The court invited amendment if the plaintiff could show a valid predicate act. (App. 66-67) The amended version described how

Philippine Airlines illegally seized a $100,000 security account belonging to the plaintiff. Because that security was seized in consummation of a threat to retaliate against the plaintiff's lawful exercise of their legal rights, and because this threat was made as part of a pattern of racketeering by the defendants (as alleged in the amended complaint), the complaint stated facts sufficient and reasonable under the circumstances to allege a cause of action under RICO.

Furthermore, at the April 27, 2001 hearing, Mr. Anolik described how the Airline used its distributors to insulate it from any charges of issuing rebates in violation of the tariff required by 49 U.S.C. §§ 41510 and 46309. The judge agreed that, if Mr. Anolik's explanation were true, it could form the basis for a complaint against Philippine Airlines. However, inexplicably, she stated, "it certainly has nothing to do with the claim that's before us at this moment". (App. 105-106) The trial court judge was never entitled to make a determination as to whether she <u>believed</u> the facts alleged were true. The facts pleaded were sufficient on their face. Certainly, this cause of action should have survived both the motion to dismiss <u>and</u> the motion for sanctions.

CONTRACT INTERFERENCE

The plaintiff's common claim for interference with contractual relations found disfavor because the court purportedly saw no valid contracts underlying the claim, even though such contracts were alleged in the complaint. If a valid contract could be pleaded, the court invited an amendment. (App. 67)

The Petitioners remedied that problem by pleading "numerous agreements" and "numerous contracts" to supply the plaintiff's subcontractors with their requirements for airline tickets. The amended complaint also described how Philippine Airlines and the co-defendant were intertwined through personal relationships so as to create an agency relationship. Through these relationships, Philippine Airlines became a

de facto competitor of the Plaintiff. The co-defendant's anticompetitive actions and contractual interference were therefore those of Philippine Airlines. Furthermore, at the April 27 hearing, counsel presented affidavits from witnesses attesting to the existence of oral contracts with the Plaintiff. The trial court judge was never entitled to make a determination as to whether she believed a contract actually existed. The facts pleaded were sufficient and reasonable on their face. Certainly, this cause of action should have survived both the motion to dismiss and the motion for sanctions.

INTERFERENCE WITH PROSPECTIVE RELATIONS

In her dismissal of the original complaint, the district court found that the plaintiff did not show any unsavory conduct by Philippine Airlines in its termination of the plaintiff's distributorship. If there was wrong conduct to show, the Court invited the plaintiff to amend. (App. 67-68)

To fix the problem, the plaintiff alleged that, because of Philippine Airlines' actions, they could not service their customer base or form new customer relations. The trial court judge was never entitled to make a determination as to whether she believed the facts alleged were true. The facts pleaded were reasonable and sufficient on their face. Certainly, this cause of action should have survived both the motion to dismiss and the motion for sanctions. Alleging these facts should have been sufficient to state a non-frivolous cause of action.

We do not care to argue that the plaintiff pleaded a bullet-proof set of claims in this case. Regardless of the quality of the pleadings, the claims show an honest effort at making a case. The term of art we employ here is "frivolous". That term embraces both subsections (2) and (3) of Rule 11 (b).

2. Application of the Frivolousness Standard

A paper is "frivolous" if it is "both baseless and made without a reasonable and competent inquiry." Townsend v. Holman Consulting Corp., *supra*, 929 F.2nd at 1362;

Buster v. Greisen, *supra*, 104 F.3rd at 1190 (9th Cir. 1997). An assertion is baseless where it completely lacks a factual foundation. Montrose Chem. Corp. of Calif. v. American Motorists Ins. Co., 117 F.3rd 1128, 1133 (9th Cir.1997) Baseless also means a competent attorney could not form a reasonable belief that it is warranted by existing law or a good faith argument for extension, modification or reversal of existing law. Golden Eagle Distributing Corp. v. Burroughs Corp., *supra*, 801 F.2nd at 1538. Both the "baseless" and "reasonable inquiry" determinations are governed by an objective standard of "reasonableness under the circumstances." See In re Keegan Mgmt. Co., Securities Litigation, *supra*, 78 F.3rd at 434 (9th Cir. 1995).

In essence, according to the trial court, the original complaint failed because it lacked enough facts to meet the legal standards for the claims it invoked. The district court granted leave to amend all but one of the causes of action. As the above discussion illustrates, the plaintiff added considerable material to the amended claims sufficient to support the causes of action on their face.

The plaintiff's acceptance of the judge's invitation to amend induced an honest effort. Even if the first two claims were eventually voluntarily abandoned, we see a serious enhancement of facts in the reasonable attempt to show an antitrust problem. We see the same with the unfair trade claim. The *RICO* claim spells out a loss that only initially failed due to a timing element. Consequently, counsel brought to the district court fresh evidence of a predicate act to shore up a potentially good charge. Counsel tried to cure the want of specificity of contract by generally referring to numerous oral contracts in the amended complaint and then bringing specific evidence of those contracts to the hearing.

In deciding to sanction the plaintiff and counsel, the Judge landed on the idea that the amended complaint floundered for the same reasons as the original. (App. 149) But arguments do not become frivolous just because a court has heard them before. While the trial court's

conclusions remained the same, the amended complaint did allege new and additional facts. In her orders for dismissal and sanctions, the trial court decided she did not believe the facts as pleaded, which was an improper application of a subjective standard under Rule 12 (b)(6).

In U.S. Ex Rel. Robinson Rancheria v. Borneo, Inc., 971 F.2nd 244 (9th Cir.1992), a district court imposed sanctions for the bringing of a motion to reconsider a dismissal. The court had found the case to be "absolutely outrageous [and] meritless". However, although the claims in the present case met all the necessary legal requirements to sustain a cause of action, the claims in *Robinson* were legally tenable but ultimately did not meet all the requirements of the underlying statute. However, as happened in this case, the district court allowed the plaintiff to amend. Applying a *de novo* review to overturn the sanctions, the Ninth Circuit found the district court's view of the law (which does not require a showing of abuse of discretion) erroneous.

> [W]e cannot overlook the fact that the district court invited Robinson to file a motion to reconsider when it first dismissed the claims. Although the motion to reconsider presented no new arguments, Robinson's arguments did not become frivolous merely because the district court had heard them before. *Id.* at 254.

Like Robinson, the Plaintiff here presented much of the same argument in the amended complaint but, unlike Robinson, fortified it with new factual material, as specifically requested by the trial court. If one were to read the sanction decision without an independent look at the complaints, one would think from the court's language that the plaintiff simply regurgitated the exact same allegations in the amended complaint as in the original. A cursory examination of the two documents demonstrates this is just not true, a fact reflecting poorly on the district judge's exercise of discretion.

Even if the amended complaint and some of the

arguments in support of it are arguably flawed, nothing in Rule 11 requires winning lawyering in order to avoid sanction.

> [N]either Rule 11 nor any other rule imposes a requirement that the lawyer, in addition to advocating the cause of his client, step first into the shoes of opposing counsel to find all potentially contrary authority, and finally into the robes of the judge to decide whether the authority is indeed contrary or whether it is distinguishable. It is not in the nature of our adversary system to require lawyers to demonstrate to the court that they have exhausted every theory, both for and against their client. Nor does that requirement further the interests of the court. It blurs the role of judge and advocate.

Golden Eagle Distrib. Corp. v. Burroughs Corp., 801 F.2nd 153, 1542 (9th Cir. 1986).

Before leaving the subject of amended complaints, the case of Stern v. Leucadia National Corp., 844 F.2nd 997 (2nd Cir.1988), cert. den. 488 U.S. 852 deserves a look. In Stern, a district court dismissed the original complaint but granted leave to amend. Like our district court, the court in Stern said the plaintiff could amend "if such re-pleading can allege sufficient facts upon which the allegations rest". *Id.* at 1005.

The case involved fraud allegations. The amendment allocation required that the plaintiff amend within the restrictions of FRCP 9(b), requiring fraud claimants to plead so that "the circumstances constituting fraud or mistake shall be stated with particularity. ...".

Unlike our case, Stern's amended complaint set forth very little in the way of additional facts. Displeased with the Rule 9(b) shortfall, the district court dismissed the amended complaint for good and imposed sanctions. The appellate court saw fit to reverse. The comments of the opinion's author could have been written for our case.

Looking at the district court's determination in light of

the amended complaint, the Stern court declared that, "despite our agreement with the district court that the new material was insufficient to satisfy Rule 9(b), we are unable to conclude that it was patently clear that there was absolutely no chance that the new material could cure the defect. ... Plaintiff and his counsel did not reach the point of clear abuse at which sanctions are appropriate. *Id.* at 1006. The Stern opinion stressed that "any and all doubts must be resolved in favor of the signer." *Id.* at 1005.

The Second Circuit made much of a point important to our consideration. In our case, as in Stern, the district court invited amendment with an eye toward factual enhancements. The Stern plaintiff offered little, while our plaintiff presented a significantly elaborated amended complaint. The Stern Court observed:

> [S]ince leave to replead was granted for purpose of adding factual matter in an effort to comply with [defects in original complaint], sanctions should not have been granted simply because the amended complaint was "repetitious". Where a party's complaint has been dismissed for failure adequately to set forth an element of his claim, and he has been given leave to replead in an effort to cure the deficiency, it is to be expected that the amended complaint will repeat the other allegations found in the original complaint. Indeed, without repetition of many of the original allegations, the amended complaint would fail to state a claim even if the original defect were cured. *Id.* at 1005.

The essence of the Stern case smells and tastes like the essence of this case. A plaintiff and his counsel should not be punished for pursuing claims through an amended complaint if the amendment makes an honest effort to meet the criticisms leveled at the original. "Where a party is given leave to replead, the court should focus on whether new allegations meet the standards of Rule 11." Official Publications, Inc. v. Kable News Co., 884 F.2d 664,

670 (2nd Cir. 1989), citing *Stern*. Moreover, answering a court's invitation to replead should not subject one to punishment lest it be construed as a sort of judicial snare.

At the hearing on the amended complaint, counsel presented the district court with new factual foundations for the *RICO* and the contract-based claims. Counsel offered plausible explanations for why these fresh facts were only now coming to light. Another basis for the *RICO* claim was only confirmed that morning. Reluctant witnesses only recently agreed to make affidavits concerning oral contract obligations with Sextant Travel. Speaking to the affidavits supporting real contract obligations, the judge merely groused that the contents of these affidavits were not recited in the amended complaint. (App. 112-113)

Addressing counsel's point that Philippine Airlines was violating federal regulatory law in its pricing, the judge agreed that, if this explanation had merit, it could form the basis for a complaint against Philippine Airlines. The judge agreed it might well support a *RICO* charge, but not the one described in the complaint. In this light, the judge's contention that the RICO claim was frivolous is simply not understandable (*Id.*)

In In re: Keegan Management Co., Securities Litigation, *supra*, 78 F.3rd 431, the sanctioned lawyers argued that the district court erred by failing to consider after-acquired evidence that supported their complaint. The Ninth Circuit agreed. Although decided in the context of summary judgment, the district court in Keegan acted very much like the district court in this case. The Keegan court acknowledged that "if, prior to filing the complaint, Plaintiffs had in their possession the same information that they offered in opposition to summary judgment, it would have been sufficient to justify filing this lawsuit." *Id.* at 434.

The district judge in this case agreed that evidence of tariff violations by Philippine Airlines might well support a cause of action. While she did not expressly say as much

about the newly present contract evidence, she did bemoan the fact that it was not recited in the complaint, implying that it would make a difference.

The Keegan court ruled that "[t]he district court itself conceded that plaintiff's pretrial evidence was enough to render their complaint non-frivolous. Under these circumstances, Rule 11 sanctions could not be properly imposed." *Id.* at 435

3. Reasonable Inquiry

An attorney may not be sanctioned for a complaint that is not well-founded so long as the attorney conducts a reasonable inquiry. Neither can the lawyer be sanctioned for a well-founded complaint that did not have a reasonable inquiry. *Id.* at 434. We have a combination of these concepts in this case.

The *RICO* and contract-based claims fall into the latter category because of the late-discovered evidentiary support. The balance of the complaint is based on well-grounded facts, even if it allegedly falls short on making a viable legal claim.

In short, the plaintiff, through counsel, presented an objectively honest complaint. But for the district court's impatience and misconception of the rules of pleading and sanction, at least two viable claims die and two lawyers endure reputation and financial damage.

As a result, the district court's holding that the complaints were frivolous was based on an erroneous view of the law. Thus, the district court necessarily abused its discretion in imposing sanctions against the plaintiff and counsel for filing frivolous actions. *See* Cooter & Gell v. Hartmarx Corp., *supra*, 496 U.S. at 405; Montrose Chemical Corporation v. American Motorists Insurance Company, *supra*, 117 F.3rd at 1134.

Another indicia of the trial court's abuse of discretion was that no inquiry was made as to how the sanctions were to be measured or apportioned. Although, subsequent to the hearing, the trial court asked the defendants for a bill of particulars regarding the amount of

attorney's fees charged as a starting point for the measurement of sanctions (App. 156), and although the amount pleaded in the bill of particulars was later substantially reduced by the judge (*Id.*), it is entirely unclear as to why counsel for the Plaintiffs were charged with such a large proportion (i.e., 1/3) of the sanctions award, or why each attorney (Mr. Anolik and Mr. Palik) was awarded the same amount of sanctions. Certainly, the amount each attorney earned for working on the case should have been some measure of the proportionality of the sanctions awarded, but this inquiry was never made. What if the sanctions awarded represented only 20% of the fees earned by one attorney, but 100% of the income paid to the other? Certainly such an arbitrary assessment of each attorney's liability is not justified in any of the trial court's findings of fact.

B. The trial court does not adequately explain how the complaint was filed for an improper purpose due to a supposed violation of the bankruptcy court's order.

To find an improper purpose behind the amended complaint, the district court referred to the 1998 bankruptcy case of Philippine Airlines. The case of In re Philippine Airlines, 98-32705 TC, was an Ancillary Proceeding under 11 *U.S.C.* § 304 to the bankruptcy of Philippine Airlines filed in its home country. As part of the ancillary proceeding, the Northern District Bankruptcy Court issued an injunction under 11 *U.S.C.* § 304 (b).[3] (App. 10-16)

To file suit against Philippine Airlines, the plaintiff had to deal with the bankruptcy court's injunction. The

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[3] 11 *U.S.C.* § 304 (b): Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may –

(1) enjoin the commencement or continuation of -

(A) any action against -

(i) a debtor with respect to property involved in such foreign proceeding; ...

plaintiff successfully approached the bankruptcy court and obtained limited permission to sue Philippine Airlines.

In its sanction order, the district court recited and relied upon her interpretation of the limitations the bankruptcy court placed on the plaintiff's suit against Philippine Airlines. (App. 150-151) However, when the district court's interpretation of those restrictions is considered, it is difficult to see how the plaintiff could have filed any lawsuit at all against Philippine Airlines, thus obviating the bankruptcy court's order permitting them to sue and rendering it meaningless. The district court quoted the bankruptcy court's order in its sanctions order as follows:

> No actions shall be brought ...
>
> ii. for the enforcement of the [plaintiff's distributorship] agreement with Philippine Airlines, unless otherwise permitted by this court. (App. 8)

The district court's sanctions order noted that the bankruptcy court limited the plaintiff to only injunctive or declaratory relief, *i.e.*, no money damages. (*Id.*)

In the Plaintiff's pursuit of injunctive relief, the district court supposedly found sanctionable conduct in what that court deemed the plaintiff's prohibited and transparent pursuit of enforcement of the distributorship agreement. (App. 148) If the complaint filed by the plaintiff actually attempted to enforce that agreement by seeking injunctive or declaratory relief from the violation of its non-contractual legal rights, it is completely unclear to the Petitioners how any lawsuit at all could have been brought against Philippine Airlines, rendering the bankruptcy court's order meaningless.

In the sanctions order, the district court stated that the plaintiff provided no support of its claimed entitlement to the benefits of distributorship status. The court felt that its criticism of the plaintiff's claim should have been made clear to the plaintiff in light of the court's identical denials of the plaintiff's TRO application and original complaint.

Because the previous denials supposedly provided ample notice to the plaintiff of the district court's problems with the case, the court felt that sanctions under Rule 11 (b)(1) were appropriate. (*Id.*)

The operative part of the bankruptcy court's order stated that the plaintiff could not sue for the enforcement of its distributorship agreement with Philippine Airlines. Furthermore, the plaintiff could only seek injunctive or declaratory relief. The district court saw a violation of the bankruptcy court limitation in the language of the plaintiff's injunction request. In this regard, the sanctions order observed that both the original and amended complaints sought injunctive relief by asking for:

> (a) Enjoining [Philippine Airlines] from denying Plaintiffs' access to Philippine Airlines tickets on the same terms and conditions as [other distributors] generally;
>
> (b) Enjoining [Philippine Airlines] from price discrimination in the sale of its tickets to Plaintiffs, including payment of any commissions, rebates, or other incentives normally paid to GSA's generally .... (App. 151)

Although the plaintiff never sought enforcement of the distributorship agreement, and in fact sought to enjoin others from enforcing that agreement in order to "level the playing field," the district court viewed that request as a "back door" attempt to enforce the distributorship agreement that had previously expired in 1999. The district court expressly tied the injunction request with the supposed lack of factual support of the plaintiff's claim "to the rights and benefits of [distributorship] status, [finding that] seeking such relief specifically defies the bankruptcy court's order". (*Id.*) In this finding the district court claimed to have found the "improper purpose," although, as we have explained, the district court's belief in this regard was unfounded since nothing in the complaint sought damages or enforcement of that agreement, or any other remedy that would have been violative of the

bankruptcy court order. This action sought to end unlawful conduct, not enforce a pre-existing agreement.

The standard governing an improper purpose finding is objective. Townsend v. Holman, *supra*, 929 F.2nd at 1362. A complaint initiating a suit, such as we see here, *cannot* be viewed for an improper purpose if the basis for the complaint itself is non-frivolous or, in other words, not in violation of the second part of Rule 11. Zaldivar v. City of Los Angeles, 780 F.2nd 823, 82 (9th Cir.1986); Townsend, *supra*, at 1362.

The preceding portion of this brief showed how the complaint did not warrant the "frivolous" label. Because "the 'improper purpose' inquiry subsumes the 'frivolousness' inquiry in this class of cases", *i.e.*, complaints, a finding of non-frivolousness ends the inquiry into the propriety of purpose[4]. *Id.* The non-frivolous nature of the suit under review here negates the declaration of improper purpose.

Even if the improper purpose idea were not subsumed into the frivolousness consideration and thus negated, we cannot objectively find an improper purpose based on the court's reasoning. So even if the improper purpose finding stood alone, that finding could not withstand this review.

We see an interesting parallel in the matter of Eavenson, Auchmuty & Greenwald v. Holtzman, 775 F.2nd 535 (3rd Cir.1985). In that case the district court allowed a substandard complaint to be amended in accordance with an exhibit submitted by the plaintiff. The order allowing amendment required the plaintiff to strike three paragraphs of the original complaint. The plaintiff

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[4] The district court's own comments demonstrate how the improper purpose concept remains inextricably intertwined with the frivolousness concept. The court observed in its improper purpose analysis that the plaintiff provided no factual support of its claimed entitlement to the benefits of distributor status. In other words, the improper purpose finding included a Rule 11 (b)(3) finding of a want of factual inquiry.

submitted an amended complaint that still included the three prohibited paragraphs in a mistaken belief that he had complied with the order. The district court disagreed, seeing no reasonable basis for the mistake. Sanctions resulted. *Id.* at 542-3.

In Eavenson the court of appeals saw the district court's decision to sanction as based solely on the lower court's perception that the appellant willfully and deliberately violated its order. However, the court of appeals concluded that the appellant could have misread the order. The Third Circuit held that, if the appellant had reasonable grounds to believe his amended complaint was in compliance with the court order, no violation of Rule 11 occurred. Eavenson, Auchmuty & Greenwald v. Holtzman, 775 F.2nd at 543-4; in accord, Liberty Lincoln-Mercury v. Ford Motor Co., 134 F.3rd 557, 569 (3rd Cir.1998).

Here too the district court had to assume that the plaintiff and counsel *deliberately* violated the bankruptcy order in order to impose a sanction. That assumption ignores the unique circumstance created by the bankruptcy court order that counsel faced in trying to craft a complaint.

Whether it had a viable claim under the law or not, the plaintiff saw an enormous amount of his business evaporate. Behind the collapse of the business, the plaintiff saw the hand of Philippine Airlines. According to the complaint, these transgressions occurred sometime in early 2000.

Philippine Airlines went into a bankruptcy at home in 1998. The U.S. court became involved only in a proceeding ancillary to the main bankruptcy filed by the Airline in its home country.

The Ancillary Proceeding Injunction of the U.S. bankruptcy court in the Philippine Airlines case issued under 11 U.S.C. § 304 and enjoined any type of suit against the Airline, for any activity, regardless of the time frame. Had Philippine Airlines been domestically based and filed

in the United States under Chapter 11 of the Code, the acts complained about by the plaintiff would have been post-petition behavior and freely open to suit.

The bankruptcy court gave the plaintiff a very short procedural leash. What could have been a procedurally simply lawsuit under normal conditions became a walk along a razor's edge. Counsel made an honest effort to protect the client's interests while attempting to operate within the confines of the bankruptcy court order. This ordeal must be examined objectively *in light of the operational limitations.*

A court looking at a case such as this, under these difficult procedural conditions, "must consider all the circumstances of a case" when judging reasonableness under Rule 11. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 40 (1990).

> When divining "the point at which an argument turns from merely 'losing' to losing and sanctionable", *Motown Prods., Inc. v. Cacomm, Inc.*, 849 F.2nd 781, 785 (2nd Cir.1988) (emphasis in original), we have instructed district courts to "'resolve all doubts in favor of the signer.'" *Id.* (quoting *Oliveri v. Thompson*, 803 F.2nd 1265, 1275 (2nd Cir.1986), cert. denied, 480 U.S. 918 (1987)); accord *Stern*, 844 F.2nd at 1005; *Eastway Constr.*, 762 F.2nd at 254. [Underlining added]
>
> Associated Indemnity Corp. v. Fairchild Industries Inc., 961 F.2nd 32, 34 (2nd Cir.1992).

Both Rule 11 itself and its application recognize that our system of litigation is an adversarial one. Presenting law and fact as favorably and fairly as possible in favor of the client is central to the lawyer's task. "Judges therefore should impose sanctions on lawyers for their mode of advocacy only in the most egregious situations, lest lawyers be deterred from vigorous representation of their clients. [citation]." United National Insurance Company v. R&D Latex Corporation, 242 F.3rd 1102, 1115 (9th Cir. 2001). "Rule 11 is an extraordinary remedy, one to be exercised

with extreme caution." Operating Engineers Pension Trust v. A-C Company, 859 F.2nd 1336, 1345 (9th Cir.1988).

Indeed, an explanation other than a bad-faith defiance of the bankruptcy court order exists for the crafting of the remedial request by counsel under tight restrictions. The district court expressed her concerns over the bankruptcy court's order vis-à-vis the complaint at the hearing on the second motion to dismiss.

> ... I'm talking about the second clause, seeking enforcement of the [distributorship] contract. [¶] I don't care if you call it "breach of contract", but if you seek a remedy getting the benefits of that contract, then I believe you've violated the bankruptcy Judge's order. And it seems to me you did, in fact, seek as a remedy the benefits that you were due under this contract. (App. 128)

At the hearing, counsel attempted to clarify the plaintiff's position with an example of how the defendants' illegal conduct required injunctive relief:

> We really aren't seeking [distributorship] benefits. We are saying that, because the tariff act is violated through the illegal rebates, we are put in a disadvantaged position unfairly. I mean this is unfair competition. [¶] We are in a position where we cannot compete, even though the competitive advantage given to the other distributors is due to an illegal act. That is our -- we're seeking injunctive relief to prevent that activity, ... (*Id.*)

This exchange between judge and counsel illustrates two points. First, counsel offered the court the reasoning behind the injunction request. He grounded it in an allegation of illegal conduct by Philippine Airlines that the court itself agreed might well support a cause of action if proved. (App. 106-107) The court was obligated to consider any new basis for the plaintiff's lawful action under the bankruptcy court order before employing the extreme measure of sanctioning the plaintiff and counsel for filing a complaint for an improper purpose. Compare

the matter of In re Keegan Mngmnt. Co., Securities Litigation, 78 F.3rd 431 (9th Cir.1996) where the Ninth Circuit found a district court in error for failing to consider after-acquired factual evidence that would support the complaint. *Id.* at 434.

Second, the district court's own language indicates that the judge herself fell into speculation over what the bankruptcy court order really meant and whether or not the complaint violated it. She said, "... I *believe* you've violated the bankruptcy judge's order. And *it seemed to me* you did ..." This more than suggests the use of a subjective standard by the district court in determining the appropriateness of sanctions. That being the case, the district court misapplied the objective test required in this circumstance. Townsend, *supra*, at 1362.

Of course, the district court could not know the real intent underlying the bankruptcy court's order. She did not write it. She had to guess at its meanings, and did just that, as her remarks suggest. The district could not know the precise intent of the bankruptcy judge and neither could counsel. Mr. Anolik and company interpreted the order in a reasonable manner and acted accordingly. The district court interpreted the order in her own way and acted accordingly, but that judge acted based on her *subjective* impression of the bankruptcy order and imposed sanctions. She violated the rule of objectivity which rests at the heart of Rule 11. These erroneous views of the law of Rule 11 regarding consideration of after-acquired evidence and misuse of a subjective standard amounts to an abuse of discretion and must not be countenanced. See Cooter & Gell v. Hartmarx Corp., *supra*, 496 U.S. at 405.

In addition to the district court's abuse of discretion for failing to give the plaintiff and counsel every benefit of the doubt as the law demands, we see, in the interpretation of the bankruptcy court's order, another legal miscue by the district court. The ruling that the plaintiff filed the complaint for an improper purpose cannot stand on its own weight nor on the frivolity examination that has

already been presented.

C. **Even though the district court stated that Rule 11 (b)(3) was a basis for her decision to sanction the Petitioners, she never gives any reason in her Order, or at the hearing, as to why that ground applies.**

Even though the district court stated that Rule 11 (b)(3) was a basis for her award of sanctions, she cannot logically find evidentiary support is entirely lacking as required by Rule 12(b)(6). There simply is no basis for an award of sanctions under Rule 11(b)(3).

III. THIS COURT SHOULD EXERCISE THEIR SUPERVISORY POWERS AND REMAND THIS CASE TO THE TRIAL COURT FOR FURTHER PROCEEDINGS, WHERE SUCH PROCEEDINGS ARE NECESSARY TO CORRECT A POSSIBLE SIGNIFICANT AND MATERIAL ERROR IN THE RECORD.

At the conclusion of the April 27, 2001 hearing, both Petitioners have the distinct and palpable memory that the district court judge stated she would not sanction the plaintiff or counsel in this case. Consequently, both Petitioners were duly shocked when the district court issued her order of sanctions of June 5, 2001. For reasons that are not known to the Petitioners, the statement by the district court regarding her decision to withhold sanctions at the time of the hearing, which may have been her very last statement, was omitted from the transcript of the proceedings. Because such a statement by the district court would have a material effect on the Petitioners' argument in this case, the Petitioners argue that a remand of this matter to the district court for further discovery on that issue is necessary to satisfy the requirements of due process.

IV. THE PETITIONERS WERE DENIED DUE PROCESS BECAUSE THE DISTRICT COURT FAILED TO HOLD A SEPARATE HEARING ON THE DEFENDANTS' MOTION FOR SANCTIONS.

Even though every Circuit Court of Appeals that has decided this question has held that a separate or additional hearing is not required for a motion for sanctions (*see* Pan-

Pacific and Low Ball Cable Television Co. v. Pacific Union Co., 987 F.2d 594 (9th Cir. 1993); Eisenberg v. University of New Mexico, 936 F.2d 1131 (10th Cir. 1991); Markwell v. County of Bexar, 878 F.2d 899 (5th Cir. 1989); Teamster's Local No. 579 v. B & M Transit, Inc., 882 F.2d 274 (7th Cir. 1989); Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987), the Petitioners argue that such a rule has deprived them of due process. However, Supreme Court Rule 10 states that this Court is inclined to consider "an important question of federal law that has not been, but should be, settled by this Court."

Petitioners argue that the Circuit Courts are either mistaken or that their rule should not be applied in this case because holding the hearing on the motion for sanctions simultaneously with the other motions heard on April 27, 2001, seriously abbreviated and truncated the proceedings so that the issues on the motion for sanctions were not adequately heard that day. An argument for this position has already been given in Section I of the Argument portion of this Petition. Given the punitive nature of a sanctions award, due process should require separate hearings.

CONCLUSION

In Rule 10 of the Supreme Court Rules, this Court has stated that a petition for certiorari will only be granted for compelling reasons. Among the examples of compelling reasons stated in that rule is the circumstance where a United States court of appeals "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power . . . ." Also stated is the circumstance where "an important question of federal law that has not been, but should be, settled by this Court."

In the proceedings underlying this Petition, the trial court invited and induced amendment of the original complaint, which the trial court believed to be unsupported by sufficient facts. Accepting the trial court's

invitation and pursuant to the court's instructions, Petitioner substantially supplemented the factual allegations and filed an amended complaint. Unfortunately, the trial court again decided that the factual allegations of the amended complaint fell short. Although Petitioner specifically amended the complaint to comply with the trial court's order, the trial court not only dismissed Petitioner's amended complaint without leave to amend, but also issued $60,000.00 in sanctions without offering more than a conclusory opinion or explanation as to why the Petitioners' good faith efforts, although ultimately unsuccessful, were sanctionable. The trial court's failure to substantiate her sanction order with more than conclusions permits only one conclusion, and that is that the Petitioners were sanctioned for failing to convince the judge, at the initial pleading stage, that the case was a certain outcome. This justification is improper, unusual and abusive. The trial court compounded this mistake when she heard the motion for dismissal simultaneously with the motion for sanctions, rather than hearing the latter motion separately.

By issuing a memorandum opinion that merely parrots the conclusions of the district court, the three-justice panel who reviewed this case for the Ninth Circuit Court of Appeals has sanctioned a departure by the district court from the accepted and usual course of judicial proceedings, warranting an exercise of this Court's supervisory powers.

For all these reasons, the Petitioners argue that the decision of the appellate court should be reversed, or at least vacated and remanded for further proceedings.

RESPECTFULLY SUBMITTED
May 2, 2003,

BY: _____
ALEXANDER ANOLIK,
Petitioner

BY: _____
ANTHONY J. PALIK,
Petitioner

APPENDIX

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United States Court of Appeals, Ninth Circuit.

SIG TRY [sic] SIG, INC.; Sextant Travel Services,
Plaintiffs,
v.
PHILIPPINE AIRLINES, INC.; Pacific Air Leisure Services;
Defendants-Appellees,
Alexander ANOLIK; Anthony Palik, Real Parties in Interest -- Appellants.

No. 01-16856.
D.C. No. CV-00-03683-CW.

Argued and Submitted Nov. 7, 2002.
Decided Jan. 9, 2003.

Appeal from the United States District Court for the Northern District of California, Claudia Wilken, District Judge, Presiding.

Before B. FLETCHER, ARNOLD [FN**] and RAWLINSON, Circuit Judges.

FN** The Honorable Richard S. Arnold, Senior United States Circuit Judge for the Eighth Circuit Court of appeals, sitting by designation.

MEMORANDUM [FN**]

FN* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit rule 36-3.

*1 The district court did not abuse its discretion by imposing sanctions on Plaintiffs and their attorneys. Sanctions may properly be imposed if either (1) the complaint is legally or factually baseless, or (2) the complaint was filed for an improper purpose. *See Saldivar v. City of Los Angeles*, 780 F.2d 823, 832 (9th Cir. 1986).

The relief request by Plaintiffs in their original complaint and in their first amended complaint ("FAC") directly violated an order issued by the Bankruptcy Court of the Northern District of California, which prohibited Plaintiffs from bringing suit against Philippine Airlines ("PA") in order to enforce a General Sales Agency ("GSA") Agreement that Plaintiffs had entered into with PA several years earlier. The complaints were therefore filed for an improper purpose.

In addition, the claims asserted by Plaintiffs in their original complaint were legally and factually baseless. The changes made by plaintiffs in their original complaint were legally and factually baseless. The changes made by Plaintiffs in the FAC did not adequately strengthen their claims or address the concerns of the district court regarding the viability of those claims. The frivolousness of Plaintiffs' claims provides another justification for the district court's imposition of Rule 11 sanctions.

The district court did not abuse its discretion in apportioning part of the monetary sanctions against Mr. Palik. *See Pavelic & LeFlore v. Marvel Ent. Group*, 493 U.S. 120, 123, 127 (1989) (holding that an attorney who signs a paper filed with the court is liable for sanctions if the court later determines that the paper was submitted in violation of Rule 11). Mr. Palik's participation in the representation of Plaintiffs consisted of signing Plaintiffs' brief in opposition to PA's motion to dismiss the FAC, orally arguing the motion to dismiss the original complaint, and appearing with Mr. Anolik at oral argument on the motion to dismiss the FAC. The district court acted within its discretion when sanctioning Mr. Palik for his involvement in presenting and defending Plaintiffs' frivolous and improper claims.

AFFIRMED.

2003 WL 77213 (9th Cir. (Cal.))

END OF DOCUMENT

[This document has been prepared in accordance with Supreme Court Rule 33]

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIG TYR SIG, INC., et al

Plaintiffs,

v.

PHILIPPINE AIRLINES, INCORPORATED, et al.,

Defendants - Appellees,

ALEXANDER ANOLIK, et al.

Real Parties in Interest-Appellants.

No. 01-16856

D.C. No. CV-00-03683-CW
Northern District of California, Oakland

ORDER

FILED
FEB 11, 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: B. FLETCHER, ARNOLD* and RAWLINSON, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The petition for panel rehearing filed on January 30, 2003, is DENIED.

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* The Honorable Richard S. Arnold, Senior United States Circuit Court Judge for the Eighth Circuit Court of appeals, sitting by designation.

[This document has been prepared in accordance with Supreme Court Rule 33]

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FILED
OCT 05 2000

Keenan G. Casady, Clerk
United States Bankruptcy
Court, San Francisco, CA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In reply to: Ancillary Petition regarding PHILIPPINE AIRLINES, INC., a Philippine corporation, Debtor.	Case No. 98-32705-TC Case Ancillary to Foreign Proceeding
J. MANUEL ("LITO") DIAZ, doing business as SEXTANT TRAVEL SERVICES, Movant. v. PHILIPPINE AIRLINES, INC., Debtor and Respondent v. ANTONIO V. OCAMPO, HENRY SO UY, JAMIE J. BAUTISTA, MARIO M. AGUAS, and RENATO Z. FRANCISCO, as Interim Rehabilitation Receiver of PHILIPPINE AIRLINES, INC. Receiver and Respondent.	ORDER MODIFYING INJUNCTION IN ANCILLARY PROCEEDING [PROPOSED]

ENTERED IN BANKRUPTCY DOCKET OCT 05 2000

A motion by J. MANUEL ("LITO") DIAZ and SEXTANT TRAVEL SERVICES (hereinafter collectively referred to as the "Movant"), parties subject to the Injunction of this Court in the above-entitled ancillary proceeding, was filed by them with this Court on shortened time, in application for an Order requesting certain relief from or modification of the Injunction, and this Court having heard the motion by telephonic conference call among the parties on September 28, 2000, and good cause appearing therefore,

IT IS HEREBY ORDERED:

That the injunction of this court, filed by it in this case on January 20, 1999, pursuant to 11 U.S.C. § 304, shall be modified as follows:

1. The Movant is permitted to file any actions it may have against the Debtor in this case, PHILIPPINE AIRLINES, INC., subject to the following restrictions:

A. No actions shall be brought

i. for the enforcement of any claims or other duties, whether arising from contract or tort, where said cause of action accrued prior to the effective date of the Debtor's plan of reorganization approved by the Philippine Securities and Exchange Commission ("PSEC"), June 7, 1999, and/or

ii. for the enforcement of the Movant's GSA agreement with Philippine Airlines, unless otherwise permitted by this Court;

B. The remedies or relief requested by the Movant in any actions brought pursuant to this Order shall be limited to injunctive or declaratory relief, and shall not be brought seeking damages without the subsequent permission of this Court; and

C. Any actions brought by the Movant pursuant to this order shall be filed only in the United States District Court for the Northern District of California, San Francisco Division.

2. The Movant's motion to recuse opposing counsel is denied without prejudice, and any further

hearing by this Court on that matter shall be made by noticed motion on twenty either (28) days notice to opposing parties, pursuant to Rule 9014-1(c)(1) of the Local Bankruptcy rules.

3. This Order may be amended as circumstances warrant.

SO ORDERED.

Dated: October 5, 2000

UNITED STATES BANKRUPTCY COURT

By: /s/ Th. E. Carlson
Hon. Thomas E. Carlson
Judge of the United States Bankruptcy Court

APPROVED AS TO FORM:

/s/ Roderick A. McLeod
BROBECK PHLEGER & HARRISON
Attorneys for Debtor and Permanent Receiver

[This document has been prepared in accordance with Supreme Court Rule 33. The following is Attachment 1 to foregoing "Order Modifying Injunction in Ancillary Proceeding"]

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TIMOTHY A. MELTZER (Calif. Bar No. 92255)
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FILED
JAN 20 1999
Keenan G. Casady, Clerk
United States Bankruptcy Court, San Francisco, CA

Attorneys for Petitioners Antonio V. Ocampo, Henry So Uy, Jamie J. Bautista, Mario M. Aguas and Renato Z. Francisco, as Interim Rehabilitation Receiver of PHILIPPINE AIRLINES, INC.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re	Case No. 98-32705-TC
Ancillary Petition regarding PHILIPPINE AIRLINES, INC., a Philippine corporation, Debtor.	ANCILLARY PROCEEDING

INJUNCTION

On September 9 and 10, 1998, this court conducted a trial regarding the objections of Aviation Sales Leasing Company ("AVSL"), General Electric Company (Aircraft Engines Division) ("GE") and The Boeing Company ("Boeing") to the ancillary proceeding petition of Antonio V. Ocampo, Henry So Uy, Jaime J. Bautista, Mario M. Aguas and Renato z. Francisco, as Interim Receiver (the "Receiver") of Philippine Airlines, Inc. ("PAL"). Frederick J. Holden, Jr. Timothy a. Meltzer, and Jeffrey K. Garfinkle

of Brobeck, Phleger & Harrison LLP appeared for the Receiver. Steven M. Hedberg and Steven G. Polard of Perkins Coie LLP, and Jay L. Westbrook appeared for Boeing. D. Farrington Yates and Carrie Beth Lesser of Haight, Gardner, Holland & Knight appeared for AVSL. David B. Haber of Haber, Lewis & Pathman LLP and Richard A. Rogan of Jeffer, Mangels, Butler & Marmaro, LLP appeared for GE.

The court has issued its Memorandum Decision, filed herein on October 30, 1998. [Interlinear: The court's findings of fact and conclusions of law are attached in that] Memorandum Decision and [in the hearing regarding the] Preliminary Injunction and Order Transferring Venue of Part of Proceeding, filed herein on July 2, 1998.[1]

In accordance with the Memorandum Decision, the court orders that all persons anywhere in the United States, with actual or constructive notice of this Injunction, are enjoined and restrained, for the duration of the proceedings concerning PAL, now pending before the Securities and Exchange Commission of the Republic of the Philippines (the "PSEC") and any successor proceeding (the "Philippine Proceedings"), from:

(i) the commencement or continuation of any action or proceeding (including the issuance or employment of process) against PAL or the Receiver:

(ii) the taking of any act against the property of PAL or the Receiver, including any action, proceeding or act (a) to seize or otherwise obtain possession of or exercise control over such property, or to terminate any interest of PAL or the Receiver therein, (b) to create, perfect or enforce any lien, judgment, attachment, restraint, assessment or order, or (c) to collect, assess or recover any claim against such property.

(iii) failing or refusing to turn over to the Receiver, for administration in the Philippine Proceedings, of any property of PAL or the Receiver in the United States as is subsequently identified by the Receiver as property of

the estate of PAL or the Receiver, or the proceeds of such property.

This Injunction is subject to the following exceptions which shall control to the extent, but only to the extent, inconsistent with the above.

1. The Export-Import Bank of the United States, First Security Bank, N.A. PAL and the Receiver shall have those rights and obligations described in that Stipulation to Extend Temporary Restraining Order and to Continue Hearing on Motion for Preliminary Injunction, approved herein by the court's order dated August 19, 1998; and all governmental units shall have the rights set forth in paragraph 3 of said stipulation.

2. Nothing herein shall impair or affect any rights or remedies under any collective bargaining agreement between PAL and the International Association of Machinists and Aerospace Workers or related law.

3. Nothing herein shall obligate any party who claims a lien or security interest that is dependent upon possession to relinquish possession of PAL's or the Receiver's property encumbered by such lien or security interest, until either (a) the obligation secured by such lien or security interest is fully satisfied or (b) further order of this court after due notice to the claimant.

4. Nothing herein shall enjoin an act to perfect, continue or maintain perfection of a lien or security interest for repairs, services, labor, materials, parts or equipment, utilized in the replacement, maintenance or servicing of aircraft engines or parts.

5. Nothing herein shall enjoin a creditor with a claim for repairs, services, labor, materials, parts or equipment, utilized in the replacement, maintenance or servicing of aircraft engines or parts from instituting suit or exercising any rights as against parties other than PAL and the Receiver.

6. GE, and its subsidiaries and divisions, and PAL and the Receiver shall have those rights and obligations as are set forth in the Stipulation to Order

Authorizing Repair work to Aircraft Engines, approved by the court's order dated July 28, 1998.

7. Nothing herein shall obligate Nora Leasing, Inc. to relinquish possession of any property now in its possession until further order of this court.

8. Nothing herein shall eliminate or modify any creditor's right of setoff or recoupment, notwithstanding the injunction of the exercise of such rights.

9. this order shall restrain Boeing from filing or prosecuting any action against PAL or the Receiver outside of the within proceeding, the Philippine Proceedings or any ancillary proceeding in any foreign country, from exercising rights of setoff or recoupment against PAL or the Receiver, and from taking any act to terminate any rights of PAL or the Receiver, but shall not require turnover of property by Boeing and, notwithstanding anything to the contrary above, shall specifically not restrain Boeing from exercising any rights under applicable non-bankruptcy law: (a) to sell Boeing 7i47-4F6 aircraft (Boeing Reference RM-081, RM-083, and RM-084) (the "Aircraft") to a party other than PAL; and (b) to complete the Aircraft in whatever manner Boeing sees fit.

10. Airlines Clearing House, Inc., and its members and associate members, and the Receiver shall have the rights and obligations set forth in the Stipulation Regarding Settlements conducted through International air Transport Association clearing House and Airlines Clearing House, Inc., approved by the court's order dated august 19, 1998.

11. This Injunction may be modified or lifted, in whole or in part, for cause shown a any time by a creditor of PAL.

12. This Injunction is subject to review by this court, at the request of a creditor of PAL, upon the earlier of (a) approval by the PSEC of a rehabilitation for PAL or

(b) conversion of the Philippine Proceedings into a liquidation.

13. If relief is granted to any creditor in the Philippine Proceedings, then the same relief is granted automatically to that creditor with regard to this Injunction, without further order of the court.

Dated: JAN 20 1999 S/THOMAS E. CARLSON
United States Bankruptcy Court

Approved as to form only:

PERKINS COIE LLP

By: _____
Steven M. Hedberg
Attorneys for The Boeing Company

HAIGHT, GARDNER, HOLLAND & KNIGHT
By: (unsigned) _____
D. Farrington Yates
Attorneys for Aviation Sales Leasing Company

---

1 The Preliminary injunction and Order Transferring Venue of Part of Proceeding provided, in part, for the transfer of venue of the Receiver's request for interim relief under 11 U.S.C. § 304(b) to the Honorable Michael B. Mukasey. Nothing contained in this Injunction shall affect that transfer of venue.

[This document has been prepared in accordance with Supreme Court Rule 33. The following is Attachment 2 to foregoing "Order Modifying Injunction in Ancillary Proceeding"]

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FILED
JAN 20 1999
Keenan G. Casady, Clerk
United States Bankruptcy Court, San Francisco, CA

Attorneys for Petitioners Antonio V. Ocampo, Henry So Uy, Jamie J. Bautista, Mario M. Aguas and Renato Z. Francisco, as Interim Rehabilitation Receiver of PHILIPPINE AIRLINES, INC.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Ancillary Petition regarding PHILIPPINE AIRLINES, INC., a Philippine corporation, Debtor.	ANCILLARY PROCEEDING Case No. 98-32705-TC ORDER GRANTING EMERGENCY *EX PARTE* MOTION TO CORRECT INADVERTENT INTERLINEATION IN INJUNCTION Date: [No Hearing Required] Time: Judge: Carlson

The Court has considered the Emergency *Ex Parte* Motion to Correct Possibly Inadvertent Interlineation in Form of Injunction (the "Motion); and good cause appearing:

IT IS HEREBY ORDERED THAT:

1. the Motion is hereby GRANTED; and

2. the Court hereby orders that all persons anywhere in the United States, with actual or constructive notice of the Injunction (which was entered by this Court on January 20, 1990) are enjoined and restrained, for the duration of the proceedings concerning Philippine airlines, Inc. ("PAL"), now pending before the Securities and Exchange Commission of the Republic of the Philippines, and any successor proceeding, from exercising any right of setoff or recoupment.

Dated: JAN 26 1999 /s THOMAS E. CARLSON

United States Bankruptcy Judge

[This document has been prepared in accordance with Supreme Court Rule 33]

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Attorneys for Plaintiffs Sig Tyr Sig, Inc., and Sextant Travel Services

ORIGINAL FILED
OCT 05 2000
Richard Wieking, Clerk
U.S. District Court
Northern District of CA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, INC., a California corporation, and SEXTANT TRAVEL SERVICES,

Plaintiffs,

v.

PHILIPPINE AIRLINES, INC., a Philippine corporation, PACIFIC AIR LEISURE SERVICES, a California corporation, and DOES 1 through 99, inclusive,

Defendants.

Case No. [C 00 3683 CW]

VERIFIED COMPLAINT FOR:

1. SHERMAN ACT VIOLATIONS
2. DISCRIMINATION IN PRICE, SERVICES, OR FACILITIES IN VIOLATION OF THE ROBINSON-PATMAN ACT
3. CARTWRIGHT ACT VIOLATIONS
4. VIOLATION OF CALIFORNIA UNFAIR TRADE PRACTICES STATUTES.
5. RICO ACT VIOLATIONS
6. INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS
7. INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS
8. INJUNCTION
9. DECLARATORY RELIEF

Plaintiff hereby alleges as follows:

ALLEGATIONS COMMON TO ALL

CAUSES OF ACTION

1. Plaintiff SIG TYR SIG, INC. ("PLAINTIFF STS") is a closely-held corporation organized and existing under the laws of the State of California.

2. Plaintiff SEXTANT TRAVEL SERVICES ("PLAINTIFF SEXTANT") is a wholly owned subsidiary of STS.

3. Defendant Philippine Airlines, Inc. ("DEFENDANT PA") is a corporation organized and existing under the laws of the Republic of the Philippines.

4. DEFENDANT PA is registered to conduct business in the State of California.

5 Defendant Pacific Air Leisure Services ("DEFENDANT PALS") is a Corporation organized and existing under the laws of the State of California.

6. Venue is proper in this Judicial District because both defendants conduct business within the State of California, in the City and County of San Francisco and much of-the-conduct of issue occurred within the state of California, in the City and County of San Francisco. Furthermore, both defendants' business offices are located within the State of California, in the City and County of San Francisco.

7. This Court has jurisdiction over the subject matter of the instant action in that the causes of action contained herein arise under the Constitution, laws, or treaties of he United States, or they form part of the same case or controversy under Article III of the United States Constitution.

8. The State of California as the forum state has personal jurisdiction over both defendants because defendants reside and conduct business in the State of California and avail themselves of the benefits and protections of the laws of the State of California. Also, DEFENDANT PA contractually consented to giving personal jurisdiction to the City of San Francisco within

the State of California.

9. PLAINTIFF SEXTANT is a small travel agency located in the State of California.

10. PLAINTIFFS, and each of them, are ignorant of the true names or capacities of the Defendants sued herein under the fictitious names Does 1 through 99, inclusive and PLAINTIFFS will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. PLAINTIFFS, and each of them, are informed and believe, and based on that information and belief allege, that each of the Defendants designated as a Doe is legally responsible for the events and happenings referred to in this Complaint and unlawfully caused the injuries and damages to PLAINTIFFS alleged in this Complaint.

11. PLAINTIFF is informed and believes and thereon alleges that at all relevant times herein, Defendants were the agents and employees of their co-Defendants in doing the things alleged in this Complaint were acting within the course and scope if that agency and employment.

FIRST CAUSE OF ACTION

(SHERMAN ACT VIOLATIONS)

12. PLAINTIFF hereby incorporates by reference the allegations in the above paragraphs 1 through 11 as if fully set forth herein.

13. DEFENDANT PA's and DEFENDANT PALS' actions as alleged herein constitute unlawful, unfair or fraudulent business practices in violation of Section 1 of the Sherman Act (15 U.S.C. § 1(1982)).

14. DEFENDANT PA and DEFENDANT PALS conspired to unreasonably restrain trade, affecting interstate and/or foreign commerce, as set forth below:

A. DEFENDANT PA and DEFENDANT PALS agreed that the GSAs should be required to increase the minimum price at which they sell DEFENDANT PA's airline tickets.

B. This agreement between two separate

or affiliated corporations was unlawful in that this conspiracy or agreement was intended to cause a Breach of the GSA Agreement by terminating a GSA's right to a Competitive advantage over non-GSAs.

C. Furthermore, DEFENDANT PA's airline affects interstate or foreign commerce in that DEFENDANT PA's aircraft travel to and from the United States.

15. As a direct, foreseeable, and proximate result of defendants' Sherman Act violations, PLAINTIFFS have suffered damages, and continue to suffer damages, as set forth below.

16. PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS' violation of these laws pursuant to 15 U.S.C. § 15.

SECOND CAUSE OF ACTION

(ROBINSON-PATMAN ACT VIOLATIONS)

17. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 16 as if fully set forth herein.

18. DEFENDANT PA's and DEFENDANT PALS' actions as alleged herein constitute unlawful discrimination in price, services, or facilities, in violation of Sections 1 and 3 of the Robinson-Patman Act (15 U.S.C. §§ 13, 13a (1982)).

19. DEFENDANT PA and DEFENDANT PALS, while engaged in interstate commerce, in the course of such commerce, either directly or indirectly discriminated in price between different purchasers of Philippine Airlines' tickets of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, and where these tickets were sold for use, consumption, or resale within the united States, and where the effect of such discrimination was to lessen competition or tend to create a monopoly in the commerce of airline tickets, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit discrimination, or with customers of either of them.

20. DEFENDANT PA, while engaged in interstate commerce, discriminated in favor of DEFENDANT PALS against other GSAs or like purchasers of Philippine airline tickets, a commodity bought by them for resale, with or without processing, by contracting to furnish PALS, or by contributing to the furnishing of, services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionately equal terms.

21. DEFENDANT PA and DEFENDANT PALS, while engaged in interstate commerce, in the course of such commerce, was each a party to, or assisted in, the transaction of sale, or contract to sell, which discriminated to each of their knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge was granted to the purchaser over and above any discount, allowance of advertising charge available at the time of such transaction to aid competitors in respect to the sale of Philippine Airlines tickets of like grade, quality, d quantity.

22. DEFENDANT PA and DEFENDANT PALS, while engaged in interstate commerce, in the course of such commerce, was each a party to, or assisted in, the sale, or contract to sell, Philippine Airlines tickets in any part of the United States at prices lower than those exacted by the Defendants elsewhere in the United States for the purpose of destroying competition or eliminating the Plaintiffs or other competitors in such part of the United States.

23. DEFENDANT PA and DEFENDANT PALS, while engaged in interstate Commerce, in the course of such Commerce, were each parties to, or assisted in, the sale, or contract to sell, Philippine Airlines tickets at unreasonably low prices for the purpose of destroying competition or eliminating the Plaintiffs or other competitors.

24. As a direct, foreseeable and proximate

result of defendants' Robinson-Patman Act violations, PLAINTIFF has suffered damages, and continues to suffer damages.

25. PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS' violation of these laws, pursuant to 15 U.S.C. § 15.

THIRD CAUSE OF ACTION

(CARTWRIGHT ACT VIOLATIONS)

26. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 25 as if fully set forth herein.

27. DEFENDANT PA's and Defendant PALS actions as alleged herein constitute an unlawful trust in violation of §§ 16700, et seq. of the California Business and Professions Code (the "Cartwright Act").

28. DEFENDANT PA and DEFENDANT PALS created an unlawful trust, or conspired to create an unlawful trust, by combining their capital, skill or acts for any and all of the following purposes:

A. To create or carry out restrictions in trade or commerce;

B. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity, including Philippine Airlines tickets;

C. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, Philippine Airlines tickets intended for sale, barter, use or consumption in California;

D. To make, or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they could do all or any combination of the following:

a. Agree in any manner to keep the price of Philippine Airlines tickets at a fixed price or graduated figure;

b. Establish or settle the price of

Philippine Airlines tickets between themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the Philippines airlines in the sale or transportation of Philippine Airlines tickets; and or

c. Agree to pool, combine, or directly or indirectly unite any interests that they may have connected with the sale or transportation of any Philippine Airlines tickets, that its price might in any manner be affected.

29. As a direct, foreseeable, and proximate result of defendants' Cartwright act violations, PLAINTIFF has suffered damages, and continues to suffer damages.

30. PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS' violation of these laws, pursuant to Cal. Bus. & Prof. § 16750.

FOURTH CAUSE OF ACTION

(VIOLATION OF CALIFORNIA UNFAIR PRACTICES ACT)

31. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 30 as if fully set forth herein.

32. DEFENDANT PA's and DEFENDANT PALS' violated California Unfair Practices Act (Business and Professions Code §§ 17000, et seq.), when they engaged in the following acts and/or conspiracies to act:

A. The creation of locality discrimination in the sale of Philippine Airlines tickets with the intent to destroy the competition of Plaintiffs and any other regular established dealer in Philippine Airlines tickets;

B. The selling of Philippine Airlines tickets at less than cost, or the giving away of Philippine Airlines' tickets for the purpose of injuring competitors or destroying competition;

C. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon

like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition;

D. The use of threats, intimidation, or boycott, to effectuate a violation of California Unfair Trade Practices laws;

E. The solicitation of the violation of California Unfair Trade Practices laws; and/or;

F. Collusion with others for violating California Unfair Trade Practices laws.

33. As a direct, foreseeable, and proximate result of defendants' Unfair Trade violations, PLAINTIFFS have suffered damages, and continues to suffer damages.

34. PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS' violation of these laws, pursuant to Cal. Bus. & Prof. § 17070.

FIFTH CAUSE OF ACTION
(VIOLATION OF RICO ACT)

35. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 34 as if fully set forth herein.

36 DEFENDANT PA's and DEFENDANT PALS' actions as alleged herein constitute a violation of 18 U.S.C. §§ 1961-1964 (the "Racketeer Influenced Corrupt Organizations Act").

37. By use of threats intended to extort the PLAINTIFFS' compliance with the DEFENDANTS' demands, and while engaged in or affecting interstate commerce, DEFENDANT PA and DEFENDANT PALS received income derived, directly or directly, from a pattern of racketeering activity, where the DEFENDANTS participated as principals within the meaning of 18 U.S.C. §2, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income.

38. As a direct, foreseeable and proximate result of defendants' RICO Act violations, PLAINTIFFS have suffered damages, and continue to suffer damages.

39. PLAINTIFFS are entitled to recovery of

attorney's fees for DEFENDANTS' violation of these laws, pursuant to 18 U.S.C. § 1964.

SIXTH CAUSE OF ACTION

(INTENTIONAL INTERFERENCE With CONTRACTUAL RELATIONS)

40. PLAINTIFF hereby incorporates by reference the allegations in the above paragraphs 1 through 39 as if fully set forth herein.

41. From 1997 to present, PLAINTIFFS have entered into numerous agreements with their clients pursuant to which its clients agreed to use PLAINTIFFS' travel services and PLAINTIFFS agreed to provide such services.

42. DEFENDANT PA knew of the above described contractual relationships between PLAINTIFFS and PLAINTIFFS' clients in that PLAINTIFFS had booked travel for these clients on DEFENDANT PA's airline since 1997.

43. PLAINTIFFS and DEFENDANT PA, via Defendant Pacific Air Leisure services ("DEFENDANT PALS"), compete in the travel industry. DEFENDANT PA is intertwined with and has a vested interest in DEFENDANT PALS. DEFENDANT PALS is a GSA, similar to PLAINTIFFS. DEFENDANT PALS and PLAINTIFFS compete in the same market for clients, selling DEFENDANT PA's passenger air transportation services in exchange for incentive commission on those sales.

44. DEFENDANT PA has a vested interest in protecting DEFENDANT PALS from competition against other GSAs, such as PLAINTIFFS, for the following reasons:

a) DEFENDANT PA's controlling shareholder, Lucio Tan, used to own DEFENDANT PALS.

b) As a result of an anti-trust lawsuit, Mr. Tan (the controlling shareholder of DEFENDANT PA) transferred ownership of DEFENDANT PALS to Kim Tia, the former nanny of Mr. Tan's children.

c) DEFENDANT PA created an 8 member committee charged with advising DEFENDANT PA on its United States operations. DEFENDANT PALS sits on this committee.

d) DEFENDANT PA gave DEFENDANT PALS a preferred sublease in its building floor. DEFENDANT PA never notified nor asked for bids on the sublease from other GSAs. Instead, DEFENDANT PA automatically chose DEFENDANT PALS as the recipient of the sublease because of the close relationship between DEFENDANT PA And DEFENDANT PALS.

45. Therefore, DEFENDANT PA, via DEFENDANT PALS, and PLAINTIFFS compete with each other in the market for tickets for air travel on DEFENDANT PA's airline. Thus, even though DEFENDANT PA has promised to transact business in good faith with PLAINTIFFS pursuant to the terms of the GSA Agreement, DEFENDANT PA has a vested interest in terminating PLAINTIFFS' ability to ticket air transportation on DEFENDANT PA's airline so that PLAINTIFFS' clients will go to DEFENDANT PALS, benefiting both defendants. Specifically, DEFENDANT PA has denied replenishing PLAINTIFFS' ticket supply upon PLAINTIFFS' repeated written requests. Also, DEFENDANT PA has failed to pay the TIP owed to PLAINTIFFS. Lastly, DEFENDANT PA has terminated PLAINTIFF SEXTANT'S GSA status.

46. DEFENDANT PA has 'interfered with PLAINTIFFS' agreement with PLAINTIFFS' clients and others by terminating PLAINTIFF SEXTANT'S ability, as a GSA, or otherwise, to ticket air transportation on DEFENDANT PA's airline.

47. When DEFENDANT PA terminated PLAINTIFFS' GSA status, PLAINTIFFS could no longer supply 70% of PLAINTIFFS' clients' requests for air travel tickets on DEFENDANT PA's airline. Therefore, Plaintiffs could not fulfill their promises to it clients to provide them with travel on DEFENDANT PA's airline.

48. As an actual and proximate result of DEFENDANT PA's intentional interference, PLAINTIFFS have suffered damages as set forth below.

49 DEFENDANT PA's acts of malicious, despicable, and in conscious disregard of PLAINTIFFS' rights, in that DEFENDANT PA's acts are intended to wrongfully hold sums of money owed to PLAINTIFFS and/or terminate PLAINTIFFS' ability to conduct business.

SEVENTH CAUSE OF ACTION

(INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS)

50. PLAINTIFF hereby incorporates by reference the allegations in the above paragraphs 1 through 49 as if fully set forth herein.

51. DEFENDANT PA's conduct intentionally interferes with PLAINTIFFS' prospective economic relations in that PLAINTIFFS' ability to ticket travel on DEFENDANT PA's airline has been drastically restricted. DEFENDANT PA's actions make it impossible for PLAINTIFFS to meet the requirements of its current clients because DEFENDANT PA refuse to issue sufficient tickets to PLAINTIFFS, contrary to DEFENDANT PA's past action. As result, PLAINTIFFS are unable to form relations with new clients because PLAINTIFFS' ability to ticket air travel on DEFENDANT PA's airline has been so severely restricted.

52. DEFENDANT PA's conduct was the direct, actual and proximate cause PLAINTIFFS losing their ability to ticket air transportation on DEFENDANT PA's airline, therefore the direct, actual and proximate cause of PLAINTIFFS having to notify PLAINTIFFS' clients of PLAINTIFFS' inability to perform the terms of PLAINTIFFS' agreements with PLAINTIFFS' clients.

53. DEFENDANT PA's acts are willful, malicious, reckless, despicable and in conscious disregard of PLAINTIFFS' rights, in that DEFENDANT PA's acts are intended to wrongfully extort unsubstantiated: sums of

money from PLAINTIFFS and/or terminate PLAINTIFFS' ability to conduct business.

54. Because of DEFENDANT PA's willful and malicious or reckless conduct PLAINTIFFS are entitled to an award of attorneys fees.

EIGHTH CAUSE OF ACTION

(INJUNCTIVE RELIEF)

55. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 54 as if fully set forth herein.

56. PLAINTIFFS are informed and believe and based thereon allege that DEFENDANT PA continues, and intends to continue in the future, to engage in the conduct alleged herein.

57. The actions of DEFENDANT PA as herein alleged, have interfered with PLAINTIFFS' ability to conduct business as a consolidator. In fact, at least two of PLAINTIFFS' customers have refused to continue working with PLAINTIFFS based on DEFENDANT PA's penalizing actions against PLAINTIFFS. PLAINTIFFS have suffered and continued to suffer irreparable harm as a result of said actions.

58. For the foregoing reasons, and each of them, PLAINTIFFS are entitled to preliminary and final injunctive relief against DEFENDANT PA as follows:

a) Enjoining DEFENDANT PA from denying PLAINTIFFS' access to Philippine Airlines tickets on the same terms and conditions as GSA's generally;

b) Enjoining DEFENDANT PA from price discrimination in the sale of its tickets to PLAINTIFFS, including payment of any commissions, rebates, or other incentive normally paid to GSA's generally;

c) Divesting DEFENDANT PA and DEFENDANT PALS from any and al management and/or ownership of each other's enterprises or other businesses;

d) Ordering DEFENDANT PALS to vacate the premises it shares with DEFENDANT PA at

DEFENDANT PA's San Francisco, California, headquarters, until such time the same may be made available to the bids of other GSA's on an equal basis.

NINTH CAUSE OF ACTION

(DECLARATORY RELIEF)

59. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 58 as if fully set forth herein.

60. PLAINTIFFS ask the court for a determination of whether any of their rights were isolated under applicable federal and state laws and the extent of the harm that occurred as consequence of those violations.

PRAYER FOR RELIEF

WHEREFORE, **PLAINTIFFS PRAY FOR RELIEF AS TO ALL CAUSES OF ACTION AS FOLLOWS:**

1. Temporary, preliminary, and permanent injunctive relief as prayed herein;

2. For attorneys' fees and costs of suit incurred herein; and,

3. For such other and further relief as the Court deems just and proper.

Dated: October 4,2000

ALEXANDER ANOLIK,
A Professional Law Corporation
s/ By: Jordan A. Lavinsky
Jordan A. Lavinsky, Esq.
Attorneys for Plaintiff
Sextant Travel Services, Inc.

VERIFICATION

I, J. Manuel Diaz, declare that:

I am the Plaintiff in this action. I have read "Plaintiff's Verified Complaint" and I am familiar with the contents thereof. The allegations therein are true and accurate.

I declare under penalty of perjury under the laws of the State of California that the foregoing responses are true and correct.

Executed this 4th Day of October 2000, in San Francisco, California.

/s J. Manuel Diaz

J. Manuel Diaz on behalf of Sig Tyr Sig, Inc.
and Sextant Travel Services

[This document has been prepared in accordance with Supreme Court Rule 33]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA-
OAKLAND DIVISION

SIG TYR SIG, A CALIFORNIA CORPORATION, AND SEXTANT TRAVEL SERVICES PLAINTIFFS, VS. PHILIPPINE AIRLINES, INC., A PHILIPPINE CORPORATION, PACIFIC AIR LEISURE SERVICES, A CALIFORNIA CORPORATION, ETC., DEFENDANTS.	Case No. C 00-3683 CW PAGES 1-30 MOTION TO DISMISS

OAKLAND, CALIFORNIA
[FRIDAY, DECEMBER 15, 2000]
TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

FOR PLAINTIFFS: ANTHONY J. PALIK, ESQ.
ATTORNEY AT LAW
801 ALHAMBRA BOULEVARD
SUITE 3
SACRAMENTO, CA 95816

FOR DEFENDANT PHILIPPINE AIRLINES, INC.:

BROBECK, PHLEGER & HARRISON
ONE MARKET PLAZA
SPEAR STREET TOWER
SAN FRANCISCO, CA 94105
BY RODERICK A. McLEOD, ESQ.
THOMAS R. GREEN, ESQ.

FOR DEFENDANT PACIFIC AIR LEISURE SERVICES:

FERNANDO LAW OFFICES
255 N. MARKET STREET
SUITE 265
SAN JOSE, CA 95110
BY: RENE C. FERNANDO, ESQ.

REPORTED BY: CANDACE L. YOUNT, CSR, RMR, CRR, OFFICIAL REPORTER, USDC

FRIDAY, DECEMBER 15, 2000 10:17 A.M.

THE CLERK: CALLING THE MATTER OF SIG TYR SIG VERSUS PHILIPPINE AIRLINES, CIVIL ACTION ÑUMBER C 00-3683. COUNSEL PLEASE COME FORWARD; STATE YOUR APPEARANCES FOR THE RECORD.

MR. MC LEOD: YOUR HONOR. ROD MC LEOD, BROBECK, FOR PHILIPPINE AIRLINES.

MR. PALIK: GOOD MORNING, YOUR HONOR. ANTHONY PALIK SPECIALLY APPEARING FOR ALEXANDER ANOLIK REPRESENTING SIG TYR SIG, INC., AND SEXTANT TRAVEL SERVICES.

THE COURT: GOOD MORNING. YOU CAN JUST STAY UP AT THE PODIA.

MR. PALIK: OH, OKAY. WE'VE GOT TWO

HERE.

THE COURT: THERE'S NO SENSE SITTING DOWN.

MR. PALIK: ALL RIGHT.

MR. MC LEOD: IF I COULD INTRODUCE TWO OTHER GENTLEMEN, YOUR HONOR.

THE COURT: OKAY

MR. MC LEOD: MR. GREEN, WHO HELPED ON THE BRIEFS TREMENDOUSLY, AND .... .

MR. FERNANDO: RENE FERNANDO ON BEHALF OF DEFENDANT PACIFIC AIR LEISURE SERVICES, YOUR HONOR.

THE COURT: OH. WELL, YOU HAVEN'T MOVED.

MR. FERNANDO: THAT'S CORRECT.

(PAUSE IN PROCEEDINGS)

THE COURT: WELL, IT JUST DOESN'T SEEM TO ME THAT YOU HAVE AN ANTITRUST CLAIM HERE AT ALL NOR THAT YOU COULD EVER MAKE ONE. THE ONE THAT YOU TALK ABOUT MAKING IN YOUR OPPOSITION ABOUT THE AIRLINE TRYING TO MONOPOLIZE THE AIRLINE MARKET ISN'T A CLAIM THAT YOU WOULD HAVE STANDING TO BRING. AND THEN ON THIS . . . INTENTIONAL INTERFERENCE WITH CONTRACT, YOU S ELL TICKETS TO PEOPLE. INTERFERENCE WITH CONTRACT HAS TO BE AN EXISTING CONTRACT, NOT A DESIRED FUTURE CONTRACT. SO ONLY IF YOU HAVE SOME EXISTING YET UNFULFILLED CONTRACT WITH A CUSTOMER TO GIVE THEM A REDUCED RATE TICKET AND THEN THEY INTENTIONALLY INTERFERED WITH THAT - BUT MY IMPRESSION OF AIRLINE AGENTS - TRAVEL AGENTS' TICKET SALES ISN'T THAT THEY ENTER INTO BINDING CONTRACTS WITH THEIR CUSTOMERS TO SELL THEM A TICKET IN THE FUTURE. THEY EITHER SELL THEM A TICKET ON THE SPOT OR THEY DON'T SELL THEM A TICKET.

AND THEN THE - THE INTENTIONAL INTERFERENCE WITH FUTURE ECONOMIC BENEFIT, OR WHATEVER IT IS. YOU HAVE TO HAVE A WRONGFUL ACT THERE SO - AND THERE ISN'T ONE, EXCEPT THE ALLEGED ANTITRUST WHICH, AS I SAY, I JUST DON'T SEE HOW YOU CAN MAKE OUT. ITS' BASICALLY AN EXCLUSIVE DEALERSHIP KIND OF SITUATION AND THEN SOMEONE DOESN'T WHAT TO HAVE THAT DEALER ANYMORE AND THAT'S JUST NOT AN ANTITRUST CLAIM.

MR. PALIK: YOUR HONOR, MAY I RESPOND?

THE COURT: YES.

MR. PALIK: WITH REGARD TO THE ANTITRUST CLAIM, WE WERE REMISS IN MAKING A VERY, VERY IMPORTANT ARGUMENT IN OUR - IN OUR OPPOSITION AND WE APOLOGIZE TO THE COURT FOR THAT.

THE DEFENDANT HAS ATTEMPTED TO DISTRACT THE COURT, WE BELIEVE, AND HAS ALMOST SUCCEEDED IN DISTRACTING US WITH THIS ISSUE OF INTERBRAND COMPETITION.

ALTHOUGH THE SEXTANT - ALTHOUGH THE PLAINTIFF WILL CONTINUE TO ALLEGE THAT TERMINATION OF ITS DISTRIBUTORSHIP WAS IN FURTHERANCE OF A PLAN TO LIMIT INTERBRAND COMPETITION IN THE RELEVANT MARKET - AND I KNOW THAT'S THE ISSUE YOU'RE TALKING ABOUT NOW, IF I'M NOT MISTAKEN - THAT THAT'S - THAT'S THE PROBLEM YOU'RE SAYING.

THE COURT: THAT'S YOUR SORT OF NEFARIOUS CONSPIRACY THAT IT REALLY IS BEYOND THIS DISPUTE BETWEEN YOURSELF AND PHILIPPINE AIR BUT, RATHER, IS A HUGE DISPUTE - A HUGE CONSPIRACY WITH PHILIPPINE AIR AND THE PHILIPPINE GOVERNMENT TO -

MR. PALIK: WELL -

THE COURT: -- MONOPOLIZE THE

AIRLINES, WHICH MAY OR MAY NOT BE TRUE, BUT I DON'T THINK IT'S ANYTHING THAT YOU'D HAVE STANDING TO SUE ABOUT.

MR. PALIK: RIGHT. AND ACTUALLY IF IT WERE JUST THAT, I'D AGREE, YOUR HONOR. WE'D BE WITHOUT A CASE. BUT THERE IS SOMETHING VERY IMPORTANT THAT I DID LEAVE OUT AND I'LL GET TO IT.

THE PROBLEM HERE IS THAT THE PLAN BY - BY PACIFIC - BY PHILIPPINE AIRLINES DECREED A VERTICAL RESTRAINT ON INTRABRAND COMPETITION WHICH IS IN FURTHERANCE OF AN ANTICOMPETITIVE ARRANGEMENT BETWEEN PAL'S OTHER WHOLESALERS WHO MAY WISH TO ENGAGE IN PRICE-FIXING IN THE FUTURE AND CERTAINLY DESIRE TO ENGAGE IN TERRITORIAL DIVISION BY WAY OF A DEALER CARTEL IS REALLY WHAT WE SHOULD BE ARGUING HERE IN THIS CASE.

AND WE BELIEVE THAT - THAT THE PLEADING ITSELF, THE COMPLAINT ITSELF, STATES AN ANTITRUST CLAIM. AND WE UNDERSTAND THE COURT'S CONCERN. YOU KNOW, DO WE HAVE A CASE? DO WE HAVE A THEORY? WE DON'T WANT TO WASTE ANYONE'S TIME HERE. WE DON'T WANT TO WASTE THE DEFENDANT'S TIME. WE DON'T WANT TO WASTE YOUR TIME. AND SO IT'S - IT'S IMPERATIVE THAT WE MAKE CLEAR PRECISELY WHAT KIND OF HARM IT IS WE'RE ALLEGING. AND THAT I THINK WAS - WAS MADE ESPECIALLY CLEAR BY THE DEFENDANT IN ITS REPLY BRIEF AND THAT'S WHY I - I THANK THE COURT FOR HEARING US TODAY.

WE CAN ALLEGE THAT DURING THE WEEKEND OF SEPTEMBER 15TH THROUGH THE 17TH, A DELEGATION OF SEVEN PAL DISTRIBUTORS TRAVELED TO THE PHILIPPINES TO MEET WITH TOP PAL MANAGEMENT AND DISCUSS HOW TO DIVIDE THE EXTREMELY LUCRATIVE RESALE MARKET

AMONG THEMSELVES THAT WAS CURRENTLY SERVICED BY SEXTANT, THEIR LEADING DISTRIBUTOR.

FURTHERMORE, IN A SERIES OF MEETINGS WITH ITS DISTRIBUTORS IN LATE APRIL OR EARLY MAY OF 2000, PAL ATTEMPTED TO SET A MINIMUM RESALE PRICE FOR ITS TICKET AMONG - TICKETS AMONG ITS CALIFORNIA DISTRIBUTORS WHO CONTROL AT LEAST 80 PERCENT OF THE CALIFORNIA RESALE MARKET AMONG THE ETHNIC PHILIPPINE POPULATION HERE IN CALIFORNIA.

NOW, THE - NOW, EVEN THOUGH THE DISTRIBUTORS REJECTED THAT ATTEMPT, WE BELIEVE THAT'S PART OF OUR . . . HOW WOULD YOU SAY? PART OF THE MATRIX OR PART OF - OF THE CIRCUMSTANCES THAT WOULD HELP US PROVE OUR CASE.

OF COURSE, IN AN ANTITRUST CASE, THERE'S - THERE'S THE PER SE STANDARD AND THERE'S THE - THE REASONABLENESS STANDARD. WE DO BELIEVE THAT THIS IS A PER SE VIOLATION OF THE ANTITRUST RULES - LAWS BECAUSE IT IS A DEALERSHIP CARTEL THAT HAS ASKED PHILIPPINE AIRLINES OR THAT PHILIPPINE AIRLINES HAS ENCOURAGED IN THIS REGARD TO TERMINATE THEIR NUMBER ONE COMPETITOR IN TERMS OF THE WHOLESALE MARKET. THAT IS THE HARM THAT WE ARE ALLEGING.

AND I - I KNOW THAT WE DIDN'T MAKE THAT CLEAR IN OUR OPPOSITION. I WISH WE HAD, BECAUSE I HAVE A TERRIBLY -

THE COURT: WELL, I STILL DON'T GET IT. SO THERE'S EIGHT DEALERS -

MR. PALIK: TEN ACTUALLY.

THE COURT: - AND - OKAY. TEN DEALERS. AND THEY WISH THERE WERE ONLY NINE AND ... THAT'S - I DON'T GET IT.

SO THE TEN DEALERS - NINE OF THE

DEALERS WISH THEY DIDN'T HAVE TO COMPETE WITH THE TENTH. BUT SIMULTANEOUSLY PHILIPPINE AIRLINES DECIDES THAT THIS TENTH DEALER IS NOT ACTING RIGHT AND TERMINATES IT FOR NOT ACTING RIGHT.

WHERE - I STILL DON'T -

MR. PALIK: THE ESSENTIAL ELEMENT, YOUR HONOR -

THE COURT: - SEE THE ANTITRUST VIOLATION.

MR. PALIK: OH, I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU.

THE ESSENTIAL ELEMENT, HOUR HONOR, IS THE AGREEMENT BETWEEN THE CARTER - THE GROUP - THE ORGANIZED GROUP OF DISTRIBUTORS AND THE SUPPLIER. IT'S THAT RELATIONSHIP WHICH CREATES THE PROBLEM

IN FACT, IF - EVEN WITHOUT THE SUPPLIER WE COULD ARGUE, ALTHOUGH THE FACTS IN THIS CASE DON'T -

THE COURT: WELL, LET'S SAY A MANUFACTURER HAS AUTHORIZED DISTRIBUTORSHIPS, AND IT HAS TEN OF THEM, AND NATURALLY EACH ONE OF THE - OF THEM WISHES THEY COULD HAVE THE BUSINESS OF THE OTHER.

MR. PALIK: MN-HMM.

THE COURT; AND THE MANUFACTURER HAS ITS OWN REASONS FOR TERMINATING ONE OF THEM.

MR. PALIK: MN-HMM.

THE COURT: THAT DOES REDOUND TO THE BENEFIT OF THE REMAINING ONES NATURALLY.

MR. PALIK: MN-HMM.

THE COURT: BUT . . . UNLESS, I SUPPOSE, THERE WAS SOME AGREEMENT TO DO SO FOR SOME ANTICOMPETITIVE PURPOSE BUT . . . WHY DON'T YOU TRY AGAIN. I JUST -

MR. PALIK: SURE. SURE. NO. PLEASE. THANK YOU VERY MUCH FOR YOUR QUESTIONS.

IF - IF THE DEALERS WERE COMPETING AMONGST THEMSELVES IN A FREE AND OPEN MARKET IN THE SENSE THAT WHOEVER HAD THE BEST ADVERTISING, WHOEVER HAD THE BEST METHOD OF MARKETING THEIR SALES TO THEIR - THEIR DOWNLINE RETAILERS, IF THAT ELIMINATED OUR CLAIM, WELL, SO BE IT. THAT'S THE MARKET. AND THAT'S THE WAY THE WORLD WORKS AND THERE'S NOTHING WE CAN DO ABOUT THAT EXCEPT BE A BETTER COMPETITOR.

BUT IN THIS CASE, WHAT WE'RE ALLEGING IS THAT THE NINE OTHER - OR MIGHT BE 11 OTHER - I CAN'T REMEMBER IF IT'S TEN OR 12 DISTRIBUTORS. BUT THE OTHER DISTRIBUTORS ORGANIZE THEMSELVES AND USE THE POWER OF THE SUPPLIER TO FURTHER THEIR ENDS IN ELIMINATING THE OUR CLIENT AS ONE OF THEIR COMPETITORS. THAT, WE ALLEGE, IS UNFAIR COMPETITION AND IS ANTITRUST.

THE COURT: WELL, HOW COULD THEY USE THE POWER - HOW COULD THE TRAVEL AGENTS USE THE POWER OF THE AIRLINE?

MR. PALIK: BY GUARANTEEING THE AIRLINE A BETTER - A BETTER . . . A BETTER DEAL BASICALLY AT THE EXPENSE OF THE CONSUMING PUBLIC. IN OTHER WORDS, THAT'S WHERE -

THE COURT: WELL, WE HAVE TO PROVE IT, YOUR HONOR. I MEAN WE NEED TO DO DISCOVERY AND WE NEED TO FIND THE FACTS.

AND WHAT WE'RE ASKING THE COURT TO DO IS TO ALLOW US TO PROCEED WITH THAT FACT-FINDING AND - OR -

THE COURT: SO -

MR. PALIK: -- AMEND OUR COMPLAINT.

THE COURT: -- THEY SAY, "IF YOU GET RID OF THIS TENTH GUY, WE'LL SELL MORE OF

YOUR PRODUCT."

MR. PALIK: NOT EXACTLY. ACTUALLY THEY MAY AGREE TO A PRICE-FIXING ARRANGEMENT. THEY MAY AGREE -

THE COURT; THEY MAY AGREE TO A PRICE-FIXING?

MR. PALIK: WELL, WE DO HAVE EVIDENCE OF THE FACT THAT THERE WERE MEETINGS IN THAT REGARD EARLIER THIS YEAR, MEETINGS HELD AT THE INSTANCE OF PHILIPPINE AIRLINES TO ASK THE DISTRIBUTORS TO SET A MINIMUM PRICE. OUR PM'S ARE A PER SE VIOLATION OF THE SHERMAN ACT AND THAT'S - EVEN THAT PARTICULAR REPORT WAS REJECTED BY THE DISTRIBUTORS, WE THINK IT - IT IS PART OF THIS PLAN. IT'S PART OF THIS - THIS ARRANGEMENT.

IT'S A COLLUSIVE SITUATION TO THE EXCLUSION - IT'S OUR ARGUMENT THAT THE ANTITRUST LAWS - IF YOU'RE WONDERING ABOUT WHAT THE INJURY IS AND WHERE THE HARM LIES, IT'S OUR ARGUMENT THAT THE ANTITRUST LAWS ARE TO PERMIT THE ENTRY OR TO PREVENT THE EXTERMINATION OF A DISTRIBUTOR, WHERE THIS BECOMES A BARRIER TO ENTRY TO THE MARKETPLACE, BASICALLY. THAT'S THE HARM HERE IS THAT THE DISTRIBUTORS ARE NOT ABLE TO ENTER THE MARKET WITHOUT - WITHOUT THE GOOD GRACES OF MR. TAN AND PHILIPPINE AIRLINES. NOW -

THE COURT: THAT'S THE SAME WITH ANY EXCLUSIVE DISTRIBUTORSHIP. YOU'VE GOT TO HAVE SOMETHING THAT DISTINGUISHES YOUR SITUATION FROM THE UNQUESTIONABLE RIGHT OF A MANUFACTURER TO HAVE EXCLUSIVE DISTRIBUTORS.

MR. PALIK: WE CONCEDE THAT. WE CONCEDE THAT - THAT A MANUFACTURER CAN

ESTABLISH AN EXCLUSIVE DISTRIBUTORSHIP. THE PROBLEM HERE IS THE DEALERSHIP CARTEL.

WHAT HAPPENS IS BECAUSE OF THE CARTEL'S EXISTENCE AND ITS COOPERATION WITH THE SUPPLIER, WHAT YOU HAVE BASICALLY IS COMPLETE MARKET DOMINANCE IN AN AREA WHERE PERSONS MIGHT NOT BE ABLE TO USE OTHER AIRLINES IN THE FUTURE.

NOW, THAT'S - THAT'S, ALBEIT AN ANCILLARY EFFECT, WE UNDERSTAND THAT THAT'S -

THE COURT: WHY WOULD IT HAVE ANY EFFECT ON PEOPLE'S ABILITY TO USE OTHER AIRLINES?

MR. PALIK: WELL, BECAUSE OF MR. TAN'S POLITICAL CONNECTIONS WITH THE PHILIPPINES, YOUR HONOR. WE KNOW THAT THAT'S - THAT'S THE PART OF OUR OPPOSITION, I THINK, THAT PROBABLY CAUSED YOU THE GREATEST CONCERN IN TERMS OF HOW WE WOULD CONNECT IT TO THE INDIVIDUALIZED HARM OF OUR PARTICULAR CLIENT AND WHY THERE IS A STANDING ISSUE.

WHAT WE ARE ASKING THE COURT FOR IS AN OPPORTUNITY TO PROVE OUR CASE IN THAT REGARD, THAT THERE IS A CONNECTION, THAT OUR CLIENT WAS THE NUMBER ONE DISTRIBUTOR - OR MAYBE NUMBER TWO DISTRIBUTOR OF PHILIPPINE AIRLINE TICKETS IN CALIFORNIA AND IN THE UNITED STATES, FOR THAT MATTER, AND THAT THIS WAS AN EFFORT BY COMPETING DEALERS TO ELIMINATE HIM THROUGH AN UNTOWARD USE OF MONOPOLY POWER BY THE SUPPLIER.

THE COURT: I FORGOT TO MENTION ANOTHER PROBLEM I HAVE WITH YOU CASE, WHICH IS THE ROBINSON-PATMAN ACT CLAIM AND THE PROBLEM THAT AN AIRLINE TICKET ISN'T

A COMMODITY.

MR. PALIK: WE AGREE, YOUR HONOR. I INFORMED OPPOSING COUNSEL BEFORE WE CAME IN THAT WE WOULD DISMISS THAT CAUSE OF ACTION.

WE - I - I RESEARCHED THE SEVENTH CIRCUIT CASE JUST AS I WAS WRITING THE OPPOSITION, DISCOVERED THAT THE NINTH CIRCUIT'S FOLLOWED IT TWICE, AND - AND ALTHOUGH I DID MAKE AN EFFORT TO ARGUE AN ALTERNATIVE THEORY, I DON'T THINK IT'S GOING TO HOLD MUSTER AND SO -

THE COURT: ONCE, YOU THOUGHT YOU COULD DEAL WITH IT, BUT IF THEY DID IT TWICE, YOU'RE GOING TO GIVE UP?

MR. PALIK: YES.

(LAUGHTER.)

THE COURT: DID YOU WANT TO RESPOND?

MR. PALIK: OH.

MR. MCLEOD: YES, YOUR HONOR. THREE MAIN POINTS.

THE COURT; WHAT? DID YOU HAVE SOMETHING ELSE YOU WANTED TO SAY?

MR. PALIK; WELL, YOUR HONOR, THERE WERE SOME OTHER ISSUES. I'M SORRY TO INTERRUPT OPPOSING COUNSEL. THERE WERE SOME OTHER ISSUES YOU'D RAISED, THOUGH WITH REGARD TO THE OTHER CAUSES OF ACTION. DID YOU WANT ME TO ADDRESS THOSE?

THE COURT: I GUESS SO.

MR. PALIK: OKAY. FIRST OF ALL, WITH REGARD TO THE UNFAIR BUSINESS PRACTICES SITUATION - OR OPPOSITION, THE DEFENDANT WANTS TO ARGUE THAT NO CAUSE OF ACTION EXISTS WHERE PAL AND SEXTANT DOESN'T' COMPETE. ONE IS A PRODUCER; THE OTHER IS THE DISTRIBUTOR.

THIS CHARACTERIZATION, HOWEVER, OVERLOOKS THE FACT THAT SEXTANT CAN ALLEGE THAT PAL IS IN AN ANTICOMPETITIVE CONSPIRACY - THIS IS THE SAME ONE I'VE BEEN TALKING ABOUT IN THE ANTITRUST PORTION OF THIS ARGUMENT - IN VIOLATION OF SECTION 17200 OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE TO - TO CAUSE THE ACTS COMPLAINED OF IN THE COMPLAINT IN VIOLATION OF THOSE STATUTES.

AND SO WE DO ACKNOWLEDGE THAT PAL AND SEXTANT AREN'T IN THEMSELVES COMPETITORS, BUT WHAT WE ARGUE IS THAT PAL IS - OR - IS THAT - EXCUSE ME - PACIFIC AIR LEISURE SERVICES, THE ONE OTHER DEFENDANT NAMED IN THIS ACTION, IS ACTING THROUGH PAL AND THAT THERE'S AN AGENCY RELATIONSHIP THERE. AND SO IN THAT REGARD, PAL IS THE AGENT FOR ITS DISTRIBUTORS.

THE COURT: WELL, I'M SORRY. THE PROBLEM WITH THAT CLAIM IS THAT . . . IT'S NOT AN INJURY TO A COMPETITOR, THAT PAL AND PA - AND SEXTANT ARE NOT COMPETITORS.

MR. PALIK: BUT PACIFIC AIR LEISURE SERVICES AND SEXTANT ARE COMPETITORS, AND PAL IS A NECESSARY PART OF -

THE COURT: THIS IS PAL'S MOTION TO DISMISS. I DON'T KNOW WHY PALS DIDN'T BRING ONE BUT -

MR. PALIK: RIGHT WELL -

THE COURT: -- IT SEEMS THEY DIDN'T.

MR. PALIK: WE DON'T KNOW, EITHER. BUT - BUT PACIFIC AIR LEISURE SERVICES IS USING PAL AS ITS AGENT AND SO THEREIN LIES THE - THE RUB. THAT - THAT'S THE BASIS FOR OUR ANTICOMPETITION COMPLAINT.

WE CAN SHOW THAT THIS RELATIONSHIP DOES EXIST. WE CAN SHOW THAT ONE IS REALLY

THE ALTER EGO OF THE OTHER AND THAT - AND THAT PALS AND SEXTANT ARE COMPETING IN THE WHOLESALE MARKET AND THAT - OR PACIFIC AIR LEISURE SERVICES - IS THAT WHAT I SAID? -- AND SEXTANT ARE COMPETING IN THE WHOLESALE MARKET.

THE COURT: SO YOU'RE SUING THE AIRLINE FOR ASSISTING ANOTHER TRAVEL AGENCY IN DOING WHAT TO YOUR CLIENT?

MR. PALIK: EXCLUDING OUR CLIENT FROM THE MARKET UNREASONABLY. AND - AND POTENTIALLY - OR ARGUABLY AS A PER SE VIOLATION OF THE ANTITRUST LAWS, AND IN VIOLATION OF A NUMBER OF THE DIFFERENT SECTIONS OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE.

(PAUSE IN PROCEEDINGS)

THE COURT: OKAY.

MR. PALIK: IF YOU'D LIKE ME TO PROCEED -

THE COURT: WELL, THEN WE HAVE YOUR RICO CLAIMS -

MR. PALIK: YES.

THE COURT: -- WHICH YOU'RE ALLEGING EXTORTION -

MR. PALIK: YES.

THE COURT; -- WHICH IS REQUIRING AN ALLEGATION OF THE USE OF FORCE OR FEAR.

MR. PAIK: YES. THAT ACTUALLY WAS -

THE COURT: I GUESS MORE THAN FEAR OF LOSING MONEY.

MR. PALIK: UM-HMM.

THE COURT: DO YOU HAVE ANYTHING YOU WANT TO SAY ABOUT THAT?

MR. PALIK: ABSOLUTELY, YOUR HONOR.

THE OTHER SIDE HAS CORRECTLY ARGUED THAT WE MUST SHOW THAT PROPERTY WAS OBTAINED IN VIOLATION OF THIS PROHIBITION

AGAINST THE USE OF THREAT OR THE USE OF FEAR TO OBTAIN IT.

WE WOULD ARGUE THAT THE PROPERTY THAT WAS OBTAINED IN VIOLATION OF - OF BOTH THE FEDERAL AND THE STATE EXTORTION STATUTES WAS A BANK ACCOUNT CONTAINING A HUNDRED THOUSAND DOLLARS THAT SECURED A LETTER OF CREDIT GIVEN TO PAL BY SEXTANT.

WHEN SEXTANT COMPLAINED LAST AUGUST THAT CERTAIN MONIES OWED IT WERE BEING WITHHELD BY THE DEFENDANT, THE DEFENDANT RETALIATED BY CONCOCTING THE SEAT HANGING EXCUSE.

NOW, WE KNOW FROM YOUR HONOR'S ORDER WITH REGARD TO THE MOTION FOR TEMPORARY RESTRAINING ORDER THAT YOU ARE INCREDULOUS OF THE SEAT HANGING EXCUSE. BUT, YOUR HONOR, WE NEED AN OPPORTUNITY TO ROVE THAT THIS IS A SMOKE SCREEN.

THE - THE DIFFERENCE - THE DISTINCTION BETWEEN SEAT HANGING AND BOOKING A RESERVATION IS A HIGHLY TECHNICAL DISTINCTION THAT MIGHT REQUIRE THE EXPERT WITNESS - OR HE TESTIMONY OF AN EXPERT WITNESS TO SHOW OR TO PROVE TO THE COURT. BUT IT IS A REAL DIFFERENCE.

SEAT HANGING --

THE COURT: WELL, BUT WHERE'S THE FORCE OR FEAR?

MR. PALIK: WELL, THE - THE FEAR - OKAY. ACTUALLY, I WAS GETTING TO THAT. I GOT A LITTLE DISTRACTED.

NOT ONLY CAN SEXTANT PROVE THAT SEAT HANGING IS A CRISIS OF THE DEFENDANTS' OWN MAKING BUT THAT SEXTANT'S EXERCISE OF ITS RIGHT TO ASK FOR AN ACCOUNTING OF MONIES OWED WAS THE MOTIVATION FOR PAL'S RETALIATION.

NOW, WHAT HAPPENED WAS THAT PAL'S THREAT OF REPUDIATION OF THE BUSINESS RELATIONSHIP IT SHARED WITH SEXTANT WAS A PRETEXT USED TO JUSTIFY ITS SEIZURE OF THE AFOREMENTIONED BANK ACCOUNT, THEREBY MAKING GOOD ON ITS THREAT. IN OTHER WORDS, OUR CLIENT WAS ALWAYS IN FEAR OF LOSING THAT MONEY.

AND WHAT - WHAT HAPPENED WAS, THE DEFENDANT SAID, LOOK, IF YOU MAKE NOISE THAT WE DON'T WANT TO HEAR, IF YOU TELL US SOMETHING WE DON'T WANT O HEAR, EVEN IF YOU HAVE A RIGHT TO ASK US FOR THAT, EVEN IF IT'S PART OF OUR - OUR RELATIONSHIP, WHETHER BY EXPLICIT CONTRACT OR BY IMPLICIT CONTRACT, OR COURSE OF DEALINGS OR WHATEVER, WE WILL TERMINATE OUR RELATIONSHIP WITH YOU AND WE WILL TAKE THAT - THAT MONEY THAT'S HELD ON DEPOSIT FOR US AND YOU'LL LOSE.

AND THAT'S AN AWFULLY BIG STICK TO HANG OVER OUR - HOLD OVER OUR CLIENT.

WHETHER OR OT THE SEIZURE OF THE BANK ACCOUNT WAS ACTIVITY ACTUALLY THREATENED AT THE TIME OR WHETHER SEXTANT CONSENTED TO THE SEIZE BY DISPUTING PAL'S SEAT HANGING CLAIM IS IMMATERIAL. WE WOULD ARGUE THAT SEIZURE OF THE BANK ACCOUNT WAS THE FORESEEABLE RESULT OF PAL'S TERMINATION OF ITS BUSINESS RELATIONSHIP WITH SEXTANT BY ALLEGING THAT SEXTANT'S SUPPOSED BREACH OF THE GSA AGREEMENT -

I'M SORRY. AM I GOING TOO FAST?

THE REPORTER: (SHAKING HEAD.)

MR. PALIK: OH, GOOD. OKAY.

- AND THE SEIZURE OF THIS PROPERTY CONSUMMATED PAL'S THREATENED ACTION. SO THAT'S THE SOURCE OF OUR EXTORTION AND

THAT'S THE BASIS FOR OUR RICO CLAIM. AND -

THE COURT: WELL -

MR. PALIK: -- THERE IS ONE MORE THING WITH REGARD TO PERSPECTIVE [sic] ECONOMIC ADVANTAGE. I DON'T KNOW IF YOU WANTED ME . . .

THE COURT: OKAY

MR. PALIK: TO MAKE THAT POINT AS WELL.

THE COURT: ALL RIGHT.

MR. PALIK: IT'S UP TO YOUR HONOR.

THE COURT: WELL, SINCE I'M SERIOUSLY CONSIDERING DISMISSING YOUR CASE, I GUESS I'D BETTER LET YOU SAY WHATEVER YOU LIKE.

MR. PALIK: SURE. WITH REGARD TO THE INTERFERENCE WITH ECONOMIC ADVANTAGE, DEFENDANTS' ARGUMENT THERE SIMPLY THAT - THAT AN ACTUAL CONTRACT MUST BE BREACHED, WE BELIEVE, IS NOT SUPPORTED BY PRECEDENT, AND WE COULD BRIEF THE COURT ON THOSE CASES.

THE COURT: NO. THERE'S TWO DIFFERENT CLAIMS. ONE IS INTENTIONAL INTERFERENCE WITH CONTRACT; ONE IS INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE.

MR. PALIK: RIGHT.

THE COURT: CONTRACT REQUIRES A CONTRACT. PROSPECTIVE ECONOMIC ADVANTAGE REQUIRES A WRONGFUL ACT.

MR. PALIK: WELL -

THE COURT: THERE'S TWO PROBLEMS, ONE WITH EACH.

MR. PALIK: RIGHT. OKAY. WELL, WITH REGARD TO THE WRONGFUL ACT, I MEAN, I THINK THAT THAT'S BORNE OUT IF WE ARE TO PROVE THE OTHER CAUSES OF ACTION.

THE COURT: RIGHT.

MR. MCLEOD: WELL, YOUR HONOR, THERE-

THE COURT: IT'S OBVIOUS THAT ALL THESE CLAIMS HAVE TO BE DISMISSED. THE QUESTION IS WHETHER I CAN DISMISS THEM WITH PREJUDICE OR WHETHER I HAVE TO GRANT LEAVE TO AMEND SOME OR ALL OF THEM.

MR. MCLEOD: WELL, WE BELIEVE WITH RESPECT TO THE ANTITRUST CLAIMS AND ANY CLAIMS THAT ARE BASED ON ANTITRUST/ANTICOMPETITIVE CONDUCT, YOU HAVE THE ABSOLUTE RIGHT TO DISMISS THEM WITH PREJUDICE NOW. THEY HAVE NOT BEEN ABLE TO PROVE ANY ANTICOMPETITIVE EFFECT ON THE MARKET. THEY HAVEN'T DONE ANYTHING -

THE COURT: WELL, WE'RE NOT TALKING ABOUT PROOF HERE. WE'RE JUST TALKING -

MR. MCLEOD: NO, NO, I UNDERSTAND.

THE COURT: -- ABOUT ALLEGATIONS.

MR. MCLEOD: BUT THEY CAN'T EVEN ALLEGE IT, YOUR HONOR.

VERTICAL RESTRAINTS ARE FINE. I MEAN, THEY'VE BEEN FIGHTING FOR THEIR CLIENT, AND THIS TRAVEL AGENT CERTAINLY FEELS BADLY ABOUT HAVING LOST OUT ON THIS DISTRIBUTORSHIP, THIS GSA AGREEMENT. BUT THAT'S LIFE, YOUR HONOR, AND THEY CAN'T BE MAKING ANTITRUST CLAIMS THAT CAN'T BE SUPPORTED IN ANY WAY.

THERE'S NO HARM WHATSOEVER, AND THEY CAN'T EVEN MAKE A CLAIM THAT THERE'S HAREM TO INTERBRAND COMPETITION. AND THAT'S WHAT THEY HAVE TO ALLEGE.

THEIR OWN BOOK - ALEXANDER ANOLIK'S TRAVEL INDUSTRY BOOK - WE QUOTED IT - EVEN SAYS THAT TRAVEL AGENTS CAN'T BRING CLAIMS. THEY HAVE NO STANDING TO BRING CLAIMS UNDER A VERTICAL RESTRAINT THEORY BECAUSE THEY'RE AGENTS.

THE COURT: NOW HE'S TALKING ABOUT THE INTERBRANDS BEING THE BRANDS OF TRAVEL AGENTS.

MR. MCLEOD: THE PROBLEM IS THAT PHILIPPINE AIRLINES DOESN'T COMPETE WITH TRAVEL AGENTS. IT DOESN'T' COMPETE WITH ITS GSA'S. IF HE WANTS TO GO AHEAD AND SUE ALL 12 OTHER GSA'S LET HIM. BUT THAT ISN'T WHAT HE'S SUED - THAT ISN'T WHAT HE'S DONE.

THE COURT: HE'S SAYING -

MR. MCLEOD: TWO TIMES -

THE COURT: – THE AIRLINE IS IN SOME SORT OF CONSPIRACY WITH THE OTHER TRAVEL AGENTS TO ELIMINATE THIS TRAVEL AGENCY.

MR. MCLEOD: WHERE'S THE EFFECT OF - IT GOES BACK TO SOME BASE QUESTIONS IN ANTICOMPETITIVE LAW, YOUR HONOR. WHERE'S THE HARM TO COMPETITION?

I THINK THE GALLO CASE AND THE SIRPA (PHONETIC) ALL SAY THAT ESSENTIALLY YOU CAN - A MANUFACTURER CAN, HAVE AS MANY DISTRIBUTORS AS HE OR SHE WANTS AND HE CAN - HE OR SHE CAN ELIMINATE ALL OF THEM IF HE WANTS. IN FACT, HE CAN GIVE SPECIAL ARRANGEMENTS TO THEM AS LONG AS THERE'S NO EFFECT ON COMPETITION.

THEY JUST DON'T HAVE STANDING. I DON'T SEE HOW THEY CAN RESUSCITATE THE STANDING IN ANY WAY, YOUR HONOR.

THE COURT: AND THE ROBINSON-PATMAN ACT IS CONCEDED. THE CARTWRIGHT ACT IS THE SAME AS THE SHERMAN ACT.

MR. MCLEOD: YES, MA'AM

THE COURT: AND THEN -

MR. MCLEOD: UNFAIR PRACTICES ACT IS THE SAME. RICO'S THE SAME. I THINK THE INTENTIONAL INTERFERENCE AND - BOTH INTENTIONAL INTERFERENCE CLAIMS ARE THE

SAME. WHERE'S THE WRONGFUL ACT? THAT'S PRECISELY - THAT WAS PRECISELY OUR POINT.

THE COURT: WELL, THE INTENTIONAL INTERFERENCE WITH CONTRACT DOESN'T REQUIRE A WRONGFUL ACT. IT JUST -

MR. MCLEOD: CORRECT, YOUR HONOR, BUT THE INTENTIONAL -

THE COURT: -- REQUIRES THE EXISTING CONTRACT WHICH -

MR. MCLEOD: WHICH IS REALLY AN ISSUE HERE.

THE COURT: WELL, I GUESS THAT'S THE THING YOU DIDN'T ADDRESS.

MR. PALIK: ACTUALLY, I - THAT WAS BECAUSE I WAS ADDRESSING THE WRONG CAUSE OF ACTION WHEN I DID SO. WE'D ARGUE THAT - THAT AN ACTUAL CONTRACT ISN'T NECESSARY BUT THAT THERE BE AN ECONOMIC RELATIONSHIP OF BENEFIT BETWEEN THE PLAINTIFF AND A THIRD PARTY. AND THAT WE DO HAVE AUTHORITY FOR AND, IF YOU'D LIKE, WE COULD AMEND OUR OPPOSITION TO CITE IF FOR YOU.

MR. MCLEOD: ONE RESPONSE TO THAT, YOUR HONOR. EVEN IF THEY CLAIM - IF - IF THEY COME BACK TO YOU AND SAY, LOOK, WE CAN ALLEGE -

THE COURT: EXCUSE ME. SO YOU AGREE YOU DON'T HAVE ANY EXISTING CONTRACTS THAT WERE INTENTIONALLY INTERFERED WITH.

MR. PALIK: WELL ACTUALLY, YOUR HONOR, I THINK WE DO. WE HAVE CONTRACTS BETWEEN OUR CLIENT AND ITS DOWNLINE RETAILERS WHO WERE INTERFERED WITH.

THE COURT: CONTRACTS?

MR. PALIK: YES, YOUR HONOR. WELL, THE - THE DOWNTIME - DOWNLINE RETAILERS RELY ON OUR CLIENT'S ABILITY TO PROVIDE THE TICKETS QUICKLY AND AT A COMPETITIVE PRICE.

THE COURT: YEAH. BUT IS THERE A CONTRACT? "I AGREE TO GIVE YOU X NUMBER OF TICKETS ON Y DATE FOR Z PRICE."

MR. PALIK: YES, I DO BELIEVE THERE ARE IN SOME INSTANCES. THE - OUR CLIENT IS A WHOLESALER AND WHATEVER RELATIONSHIPS IT DEVELOPS WITH ITS RETAILERS DEPENDS ON THE PARTICULAR CIRCUMSTANCES OF THAT RETAILER'S PARTICIPATION IN THE MARKET.

I COULD ALLEGE MORE SPECIFICALLY MAYBE IN OUR COMPLAINT WHICH CONTRACTS THOSE WERE THAT WERE VIOLATED, BUT WE ALSO ARGUE THAT EVEN IF WE'RE UNABLE TO DO THAT, WE CAN ARGUE THAT ECONOMIC RELATIONSHIPS TANTAMOUNT TO CONTRACT EXISTED WHERE THE RETAILERS DID EXPECT A CERTAIN THING TO BE PROVIDED IN THE FUTURE WHICH MAKES IT A CONTRACT RATHER THAN A PRESENT SALE.

THE COURT: HMM.

MR. PALIK: THAT THERE'S SOME EXECUTORY.

MR. MCLEOD: THERE ARE NO CONTRACTS THAT WE KNOW OF BETWEEN SEXTANT AND ITS DOWNSTREAM RETAILERS. I WOULD CAUTION COUNSEL THAT - THAT HE NEEDS TO BE REALLY CLEAR ABOUT THAT BECAUSE THESE ARE JUST - THESE ARE DOWNSTREAM RETAIL AGENTS THAT SIMPLY PLACE OTHER ORDERS. YOUR HONOR. BUT – BUT HERE'S THE REAL KEY TO THIS CAUSE OF ACTION. EVEN IF HE CLAIMED THAT THERE WAS THIS EXISTING CONTRACT AND SO FORTH, WE COULD STILL TERMINATE IT AT ANY TIME.

THE COURT: TERMINATE YOUR OWN CONTRACT.

MR. MCLEOD: TERMINATE OUR CONTRACT.

THE COURT: RIGHT. BUT HE'S TALKING ABOUT YOU INTENTIONALLY INTERFERING WITH SOME CONTRACT HE HAD WITH SOMEONE ELSE.

MR. MCLEOD: RIGHT. BUT IF WE CAN - IF WE CAN - IF WE CAN TERMINATE OUR CONTRACT AT ANY TIME WITH GOOD CAUSE - AND HE HAS TO BE ABLE TO SAY THAT IT WAS UNJUSTIFIED, ET CETERA - THEN HOW CAN HE CLAIM THAT WE INTERFERED BEYOND THE LAW WITH HIS CONTRACT - WITH HIS DOWNSTREAM CONTRACTS? THAT'S THE POINT.

THE COURT: OKAY. DID YOU HAVE ANYTHING ELSE ON THE ANTITRUST CLAIMS?

MR. MCLEOD: YOUR HONOR, ONLY THAT ... (PAUSE IN PROCEEDINGS.)

MR. MCLEOD: PHILIPPINE AIRLINES REALLY DOESN'T HAVE ANY INCENTIVE AT ALL TO CONSPIRE WITH ITS TRAVEL AGENTS. I MEAN, THAT IS A - THAT'S A VERY IMAGINATIVE CLAIM, YOUR HONOR. AND WE WANT - WE WANT TO SELL TICKETS. WHETHER IT'S THROUGH EIGHT DISTRIBUTORS OR WHETHER THROUGH - WHETHER IT'S THROUGH 50, WE DON'T CARE. WE JUST WANT TO SELL TICKETS. SO THEY REALLY HAVE AN INSURMOUNTABLE TASK TO TRY AND GET OVER THE ANTICOMPETITIVE EFFECT ISSUE. I REST THERE, YOUR HONOR.

MR. PALIK: YOUR HONOR, IN RESPONSE DIRECTLY TO THAT POINT. PHILIPPINE AIRLINES DEPENDS VERY LARGELY ON THE VAST MAJORITY OF ITS TICKETS BEING SOLD TO THE PHILIPPINE - ETHNIC PHILIPPINE PERSONS. IN THIS REGARD, THE GREATER CONTROL PHILIPPINE AIRLINES CAN HAVE OF THAT MARKET, THE BETTER CONTROL IT HAS OVER THE MARKET IN GENERAL BECAUSE IT CAN THEN RESTRICT ACCESS THE PHILIPPINES, TRAVEL TO THE PHILIPPINES, IN SUCH A WAY THAT ITS OTHER COMPETING AIRLINES ARE BASICALLY ELIMINATED FROM SERVICING THE PHILIPPINES. THAT, WE - WE UNDERSTAND IS A HYPOTHETICAL WAITING TO BE PROVED BY US. AND WE

UNDERSTAND THAT THE COURT HAS CONCERNS WITH REGARD TO THE STANDING OF OUR CLIENT. BUT WE BELIEVE THAT OUR - OUR CLIENT DOES HAVE STANDING WITH REGARD TO THE CARTEL AND ITS - ITS COLLUSION WITH THE SUPPLIER IN VIOLATION OF THE ANTITRUST LAWS, THAT THE ARRANGEMENTS THROUGH WHICH FIRMS REFUSE TO DEAL WITH OR ISOLATE ANOTHER FIRM CAN BE ANTICOMPETITIVE AND THAT COLLECTIVE AGREEMENTS MAY BE DESIGNED TO ELIMINATE CONTRIBUTION EITHER BY CREATING ENTRY BARRIERS OR FACILITATING MARKET EXITS FOR DIFFERENT COMPETITORS WITHIN THAT LEVEL - WITHIN THAT LEVEL OF THE MARKET, THAT THE VERTICAL RESTRAINT CREATES A HORIZONTALLY RESTRAINT IN FURTHERANCE OF A PLAN BY THE AIRLINE TO ELIMINATE ITS OTHER COMPETING AIRLINES.

AND I - THE PROBLEM WITH ANTITRUST, YOUR HONOR, IS, IT'S SO COMPLICATED, IT'S SO FACT DEPENDENT BECAUSE OF THE RULE—THE RULE OF REASONABLENESS AND FOR OTHER REASONS, IT DEPENDS ON SOME VERY ESOTERIC AND COUNTERVAILING TENSIONS WHICH, IF WE WERE TO [BE] DISMISSED WITH PREJUDICE TODAY, WE'D NEVER HAVE AN OPPORTUNITY TO SHOW THE COURT HOW THIS CAN ALL FIT TOGETHER. IT'S LIKE CONNECTING THE DOTS ON A VERY LARGE CONNECT-THE-DOTS PICTURE. UNTIL YOU CONNECT THOSE DOTS, YOU CAN'T REALLY SEE THE PICTURE CLEARLY. SO WE WOULD WANT AN OPPORTUNITY TO DO THAT FOR THE COURT, TO CONNECT THE DOTS.

MR. MCLEOD: WELL, YOUR HONOR, JUST ONE LAST POINT. PLAINTIFFS HAVE HAD A LOT OF TIME TO CONNECT THE DOTS. IF THE COURT WILL RECALL, THEY BROUGHT THIS ISSUE BEFORE THE COURT ON A TRO. I MEAN, THEY'VE HAD SINCE

OCTOBER –

THE COURT: WELL, OKAY. I THINK THAT I HAVE TO GIVE THEM LEAVE TO AMEND. I THINK IT WOULD BE …

MR. MCLEOD: EVEN ON THE STANDING ISSUE, YOUR HONOR?

THE COURT: WELL, THERE'S THE RICO, AND I JUST – THEY HAVEN'T HAD A CHANCE TO AMEND YET. I THINK IT WOULD BE DIFFICULT TO DISMISS WITHOUT LEAVE TO AMEND. I'M GOING TO TELL YOU, THOUGH, I HAVE EXTREME SKEPTICISM TOWARDS THIS CLAIM. AND IF YOU FILE AN AMENDED COMPLAINT THAT'S SUBJECT TO THE EXACT SAME –

MR. PALIK: UM-HMM.

THE COURT: – INFIRMITIES AS THIS ONE THAT ALLEGES A LOT OF WILD SCHEMES THAT YOU DON'T HAVE ANY PROOF FOR OR CONTRACTS THAT DON'T EXIST – I'M TALKING ABOUT WILD SCHEMES OF THE PRESIDENT OF THE PHILIPPINES AND ALL THAT SORT OF THING. IF YOU DO THAT –

MR. PALIK: UM-HMM.

THE COURT: – AND THE RESPONSE IS WELL-TAKEN, THEN I WILL CONSIDER SANCTIONS FOR UNNECESSARILY AND VEXATIOUSLY CONTINUING PROCEEDINGS THAT YOU DON'T HAVE A REASONABLE BASIS TO PURSUE. SO YOU GO THROUGH YOUR COMPLAINT AND THINK ABOUT EACH AND EVERY CAUSE OF ACTION AND THINK ABOUT ALL THESES RESPONSES AND THINK ABOUT THE FACTS YOU'RE ALLEGING AND MAKE SURE YOU'VE GOT FACTS –

MR. PALIK: UM-HMM.

THE COURT: – AND NOT SCHEMES AND UNKNOWN CONSPIRACIES AND RESULTS OF MEETINGS THAT YOU WEREN'T AT. AND IF YOU HAVE SOMETHING LIKE THAT, YOU CAN FILE IT –

MR. PALIK: YOUR HONOR – I

THE COURT: – IN 30 DAYS. NOW IF YOU DON'T HAVE ANY FEDERAL CLAIMS AND ALL –

MR. PALIK: UM-HMM.

THE COURT; – YOU HAVE IS A STATE CLAIMS, THEN THOSE SHOULD BE FILED IN STATE COURT.

MR. PALIK: WELL, WE HAVE A PROBLEM THERE, YOUR HONOR, WITH THE BANKRUPTCY COURT. IN ORDER TO FILE THIS CLAIM, WE HAD TO GET PERMISSION FROM THE BANKRUPTCY COURT TO DO IT BECAUSE PHILIPPINE AIRLINES IS IN –

THE COURT: I KNOW.

MR. PALIK: – A RECEIVERSHIP.

THE COURT; I KNOW.

MR. PALIK: SO THE BANKRUPTCY COURT REQUIRED US TO BRING ALL OUR CLAIMS HERE. WE WANTED TO GO TO STATE COURT. WE ACTUALLY DIDN'T WANT TO GO TO FEDERAL COURT. WE WOULD HAVE BROUGHT THEM ALL IN STATE COURT. SO I DON'T KNOW HOW THAT PROBLEM WOULD BE RESOLVED. I THINK WE'D HAVE TO GO BACK TO THE BANKRUPTCY COURT –

THE COURT: WELL, MAYBE YOU SHOULD DO THAT.

MR. PALIK: – UNLESS YOUR HONOR COULD TAKE - TAKE THE CASE OVER. I DON'T KNOW HOW EXACTLY THAT WOULD WORK REALLY.

(LAUGHTER.)

THE COURT: THANKS.

MR. PALIK: NOT THAT YOU'D WANT TO. BUT, YOUR HONOR, I HAVE ANOTHER QUESTION FOR YOU SINCE YOU'VE MENTIONED THE POSSIBILITY OF SANCTIONS. WE'D LIKE TO ASK A QUESTION ABOUT THAT BECAUSE I REALLY LIKE TO AVOID THOSE. I MEAN, IT'S NOT SOMETHING WE'RE INTERESTED IN INCURRING. SINCE - SINCE A COMPLAINT - SINCE MY UNDERSTANDING IS THAT-

THE COURT: YOU HAVE TO HAVE A REASONABLE FACTUAL BASIS FOR FACTS YOUR ALLEGE IN YOUR COMPLAINT, AND YOU CAN'T ALLEGE LEGAL CLAIMS THAT HAVE ALREADY BEEN ALLEGED AND SUBJECT TO LEGITIMATE LEGAL ARGUMENTS AND THEN RAISED AGAIN WITHOUT ANY CHANGE IN THE FACTS.

MR. PALIK: WELL, I UNDERSTAND, YOU HONOR, BUT - BUT - BUT ALL WE HAVE TO DO IS ALLEGE THE FACTS, ISN'T THAT CORRECT? I MEAN, WE DON'T HAVE - ACTUALLY HAVE TO PROVE OUR CLAIMS.

THE COURT; NO. BUT YOU HAVE TO HAVE A GOOD-FAITH BASIS FOR THE BELIEF IN THE FACTS THAT YOU ALLEGE.

MR. PALIK: WE DO HAVE AN ARTICLE FROM THE ECONOMIST, WHICH HIS A HIGHLY RESPECTED JOURNAL, HIGHLY RESPECTED, IT'S SCHOLARLY, WHICH IS - IS - HAS REPORTED THAT MR. TAN HAS ACTUALLY TRIED TO MAKE ARRANGEMENTS WITH THE PHILIPPINE GOVERNMENT TO REQUIRE BY LAW PERSONS IN THE UNITED STATES WHO ARE PHILIPPINE RESIDENTS - CITIZENS RESIDING HERE TO USE PHILIPPINE AIRLINES IN ORDER TO GAIN ENTRY BACK INTO THEIR OWN COUNTRY. I MEAN - I MEAN, THAT'S REPORT IN THE ECONOMIST. THAT'S A VERY REPUTABLE SOURCE. IT'S NOT THE WORLD DAILY NEWS, YOU KNOW. I MEAN, WE DO HAVE SOME EVIDENCE OF THIS. WE ALSO KNOW THAT THERE IS A LETTER -

THE COURT: OKAY. I NEED TO -

MR. PALIK: OKAY.

THE COURT: -- MOVE ON HERE.

MR. PALIK: ALL RIGHT.

THE COURT: YOU'LL JUST HAVE TO CONSULT WITH YOUR BEST PROFESSIONAL EXPERTISE.

MR. MCLEOD: THANK YOU, YOUR HONOR, FOR BRING UP THE REFERENCE TO RULE 11, THOUGH, BECAUSE IT THINK IT - IT IS A SERIOUS THING.

THE COURT: ALL RIGHT.

MR. PALIK: THANK YOU, YOUR HONOR.

(PROCEEDINGS CONCLUDED AT 10:49 A.M)

CERTIFICATE OF REPORTER

I, CANDACE L. YOUNT, OFFICIAL REPORTER FOR THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, 1301 CLAY STREET, SOUTH TOWER, ROOM 495-S, OAKLAND, CALIFORNIA 94612-5212, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1 THROUGH 30, INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING BY COMPUTER TO THE BEST OF MY ABILITY.

S/Candace L. Young February 15, 2001

CANDACE L. YOUNG, CSR, RMR, CRR

[This document has been prepared in accordance with Supreme Court Rule 33]

FILED
FEB 02 2001
Richard Wieking, Clerk
U.S. District Court
Northern District of CA

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, A CALIFORNIA CORPORATION, AND SEXTANT TRAVEL SERVICES Plaintiffs, v. PHILIPPINE AIRLINES, INC., and PACIFIC AIR LEISURE SERVICES, Defendants.	Case No. C 00-3683 CW ORDER GRANTING PHILIPPINE AIRLINES, INC.'S MOTION TO DISMISS

Defendant Philippine. Airlines (PAL) moves under Rule 12 (b) (6) of the Federal Rules of Civil Procedure to dismiss Plaintiffs' complaint. Plaintiffs oppose the motion. The matter was heard on December 15, 2000. Having considered all of the papers filed by the parties and oral argument on the motion, the Court GRANTS the motion with leave to amend.

BACKGROUND

Plaintiffs have filed this complaint against Defendants PAL and travel agency Pacific Air Leisure Services (PALS) seeking injunctive and declaratory relief and alleging anti-trust violations and unfair business competition claims under both State and federal law. Plaintiff Sig Tyr Sig (STS) is a California corporation and owner of Plaintiff Sextant Travel Services, (Sextant) a travel agency.

In 1996 Sextant and PAL entered into a "general service agreement" (GSA), which entitled Sextant to

volume commissions on the sale of airline tickets in exchange for offering those tickets at greatly discounted rates. Sextant was under contract with PAL until 1999 when the GSA expired. The parties continued to do business together until August of this year. PAL alleges that at that time it discovered that Sextant was "blocking" seats--reserving seats on flights before actually selling them--thereby preventing their sale to other customers. PAL alleges that in late August, it informed Sextant that it could no longer reserve tickets at the GSA rate. PAL asserts it discovered in September that Sextant was still reserving tickets at the GSA rate and therefore terminated its relationship with Sextant on September 30, 2000.

Defendant PALS is also a GSA. Plaintiffs claim they have been and continue to be unfairly barred from competing for the ethnic Philippine travel market by PAL's termination of Sextant's GSA status and that PAL is involved in a conspiracy with PALS to monopolize the ethnic Philippine travel market.

PAL filed for bankruptcy in 1998. Because of this, Plaintiffs had to seek special permission from the bankruptcy court to file this complaint. The bankruptcy court granted Plaintiffs permission, with the restriction that:

> No actions shall be brought
>
> i. for the enforcement of any claims or other duties whether arising from contract or tort, where said cause of action accrued prior to the effective date of the Debtor's plan of reorganization approved by the Philippine securities and Exchange Commission ("PSEC") June 7, 1999, and/or
>
> ii. for the enforcement of the Movant's GSA agreement with Philippine Airlines, unless otherwise permitted by this court.

In re Philippine Airlines, 98-32705 TC, Order Modifying Injunction in Ancillary I Proceeding, filed October 5, 2000. Plaintiffs are further limited to seeking only injunctive or declaratory relief and to filing only in the United States

District Court for the Northern District of California.

Plaintiffs filed this complaint on October 4, 2000, and sought a temporary restraining order (TRO). This Court denied Plaintiffs' motion for a TRO on October 19, 2000, finding that issuance of the TRO Plaintiffs sought would have violated the bankruptcy court's order and that Plaintiffs had failed to satisfy the requirements for injunctive relief.

DISCUSSION

PAL now seeks dismissal, without leave to amend, of Plaintiffs' complaint under Fed. R. Civ. Proc. 12(b) (6) for failure to state a claim. PAL seeks to dismiss all of Plaintiffs' claims:

(1) under Section 1 of the Sherman Anti-Trust Act, 15 U.S.C. § 1; (2) under the Robinson-Patman Act, 15 U.S.C. § 13, 13a; (3) under the Cartwright Act, California Business and Professions Code, § 16700, et seq.; (4) under California's Unfair Practices Act, Bus. & Prof. Code § 17000, et seq.; (5) under the Racketeer Influenced Corrupt Originations Act (RICO), 18 U.S.C. § 1961, et seq.; (6) for intentional interference with contractual relations;

(7) for intentional interference with prospective economic relations; (8) for injunctive relief; and (9) for declaratory relief.

A. Legal Standard under Rule 12 (b)(6)

A motion to dismiss for failure to state a claim will be denied unless it appears that the plaintiff can prove no set of facts which would entitle it to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Fidelity Fin. Corp. v. Federal Home Loan Bank of San Francisco, 792 F.2d 1432, 1435 (9th Cir. 1986), cert. denied 479 U.S. 1064 (1987). All material allegations in the complaint will be taken as true and construed in the light most favorable to the plaintiff. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). Although the court is generally confined to consideration of the allegations in the pleadings, when the complaint is accompanied by attached documents, such documents are deemed part of the complaint and may be

considered in evaluating the merits of a Rule 12 (b)(6) motion. See Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987), cert. denied, 484 U.S. 944 (1987).

Dismissal of a complaint can be based on either the lack of a cognizable legal theory or the lack of sufficient facts alleged under a cognizable legal theory. See Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990).

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Proc. 8(a). "Each averment of a pleading shall be simple and direct. No technical forms of pleading or motions are required." Fed. R. Civ. Proc. 8(e). These rules "do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds on which it rests." Conley, 355 U.S. at 47. However, "conclusory allegations without more are insufficient to defeat a motion to dismiss." McGlinchy v. Shell Chemical Co., 845 F.2d 801, 810 (9th Cir. 1988); See also Smilecare Dental Group v. Delta Dental Plan, 88 F.3d 780, 785 n.6 (9th Cir.), cert. denied, 519 U.S. 1028, (1996); Rutman Wine Co. V. E. & J. Gallo Winery, 829 W.2d 729, 735-36 (9th Cir. 1987).

When granting a motion to dismiss, a court is generally required to grant a plaintiff leave to amend, even if no request to amend the pleading was made, unless amendment would be futile. See Cook, Perkiss and Liehe, Inc. v. Northern Cal. Collection Serv. Inc., 911 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment would be futile, a court examines whether the complaint could be amended to cure the defect requiring dismissal "without contradicting any of the allegations of [the] original complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990). Leave to amend should be liberally granted, but an amended complaint cannot allege facts inconsistent with the challenged pleading. See id. at 296-97.

B. Section of the Sherman Act

Plaintiffs' first claim for violations of the Sherman Act, 15 U.S.C. § 1, fails. Plaintiffs allege that PAL and PALS conspired to restrain trade unreasonably by agreeing to increase the price of airline tickets, thereby terminating the GSA advantage. However, terminating a GSA agency's, specifically Sextant's, advantage over other travel agencies does not lead to a violation of the Sherman Act.

PAL's refusal to do business with Sextant, even if the result of an agreement between PAL and PALS, does not constitute an anti-trust violation. "[A] complaint which simply alleges that a manufacturer substituted one distributor for another fails to state a violation of the rule of reason, unless it also alleges anti-competitive effect at the interbrand level." Crane & Shovel Sales Corp. v. Bucyrus-Erie Co., 854 F.2d 802, 806 (6th Cir. 1988). In Crane the Sixth Circuit followed the Supreme Court's ruling in Continental T.V., Inc. v. GTE Sylvania, Inc., 433 US. 36 (1917) in holding that vertical restraints on trade like the one alleged here are to be tested under "the rule of reason," rather than the "per se rule." Crane, 854 F.2d at 805. A vertical restraint is a restraint on trade that runs between a manufacturer and distributor or, as here, between an airline and its ticketing agent. A horizontal restraint, which is per se violative of anti-trust law, is a restraint that runs between two competitors, for example between two airlines or between two travel agencies.

Plaintiffs have alleged no impact on interbrand competition. It is hard to see how they could. Plaintiffs complain that PAL's termination of Sextant's GSA status is anti-competitive. Yet, even if PAL eliminated all GSAs, that does not affect competition between PAL or other airlines or between travel agencies booking flights PAL and other airlines. For example, in an analogous case the Ninth Circuit affirmed the dismissal of a Sherman Act claim brought against a newspaper when the newspaper eliminated independent distributors and replaced them

with salaried employees. See Naify v. McClatchy Newspapers, 599 F.2d 335, 336 (1979). The elimination of the GSAs here would only eliminate the volume price discounts, not the availability of tickets from travel agencies or flights to the Philippines.

In its opposition to this motion to dismiss, Plaintiffs do not appear to contend that their complaint is sufficient as made. Rather, they argue that they can amend the complaint to allege anti-trust violations. Plaintiffs assert they can amend their complaint "to allege that PAL intends to use its political connections with the Philippine government to require all ex-patriot Philippine citizens to be required to utilize PAL for travel to and from the Philippines." Plaintiff's Resp. at 5. Plaintiffs assert that this anti-competitive behavior will constrain PAL's Philippine citizen customers and other airlines in violation of the anti-trust laws. If this is indeed the case, Plaintiffs are not the ones to bring this suit. Plaintiffs have no standing to allege injury to customers or competitors of PAL. See Associated General Contractors of California, Inc. v. California State Counsel of Carpenters, 459 U.S. 519, 538-543 (1983) (a union does not have standing to assert violations of the Sherman Act against an employer association because it is "neither a consumer or a competitor in the market in which trade was restrained"); See also Exhibitors' Service, Inc. v. American Multi-Cinema, Inc. 788 F.2d 574, 578-79 (9th Cir. 1986) (licensing agent for movie exhibitors did not have standing under antitrust laws because it was not a consumer or a competitor). Furthermore, the relief PAL seeks, return of its GSA status, would in no way remedy harm to PAL's customers and competitors.

At the hearing on this motion, Plaintiffs asserted they could also amend their complaint to allege that PAL acted as the agent of PALS and other GSA agencies in terminating Sextant's GSA status. Plaintiffs asserted that they could allege that the GSA agencies, including PALS, were the ones engaged in anti-competitive behavior and

were employing PAL as an agent in their scheme. This argument was not made in Plaintiffs' papers. If Plaintiffs file a new complaint alleging this theory, the Court will address it on Defendants' motion to dismiss.

Accordingly, Plaintiffs' first claim for anti-trust violations under the Sherman Act is dismissed with leave to amend, provided that Plaintiffs can state a claim that they have standing to bring.

C. Robinson-Patman Act, 15 U.S.C. § 13, 13a.

Plaintiffs' second cause of action, brought under the Robinson-Patman Act, 15 U.S.C. § 13, et seq., alleges that Defendants engaged in unlawful price, services and facilities discrimination. This claim appears to allege that I AL and PALS conspired to sell tickets at a lower price than that available elsewhere, which damaged Plaintiffs. For the reasons discussed below, the Court dismisses this claim, with leave to amend.

PAL moves for dismissal of this claim because it argues that Plaintiffs and the GSA agents do not purchase tickets from PAL, but rather are merely PAL's agents in the sale, and therefore Plaintiffs cannot state a claim under the Robinson-Patman Act because they are not purchasers. See Metro Comm. Co. v. Ameritech Mobile Comm. Inc., 984 F.2d 739, 745-46 (6th Cir. 1993) (resellers of cellular telephone service cannot state a claim under the Robinson-Patman Act because "the Act does not apply to transactions that are not sales"). Furthermore, PAL argues that even if it did sell its tickets to Sextant, the tickets are not a commodity under the act, but rather "a memorandum of an agreement creating a revocable license." Kennedy Theater Ticket Service v. Ticketron, Inc., 342 F. Supp. 922, 926 (ED. Penn. 1972); See also Fleetway, Inc. v. Public Service Interstate Transp. Co., 72 F.2d 761, 763-4 (3rd Cir. 19344) (bus travel sales services are not "commodities"); Supp. 1005-1008 (C.D. Cal. 1986) (granting motion to dismiss Robinson-Patman Act claim based on alleged discrimination in the sale of railway transportation service, citing Fleetway, and holding that

"transportation is not a commodity.").

At the hearing on this motion, Plaintiffs indicated they would not pursue this claim because airline tickets are not "commodities" under the Robinson-Patman Act. Accordingly, Plaintiffs' claim under the Robinson-Patman Act is dismissed without leave to amend.

D. Cartwright Act

Plaintiffs' third cause of action, brought under California's Cartwright Act, Cal. Bus. & Prof. Code 516700, et seq., is dismissed for many of the same reasons as is Plaintiffs' claim under the Sherman Act, upon which the Cartwright Act is patterned. See Bert G. Gianelli distributing co. v. Beck & Co., 172 Cal. App. 3d 1020, 1042 (1985) (cases interpreting the Sherman Act are applicable to the Cartwright Act).

Under the Cartwright Act, Plaintiffs must plead their claim of anti-competitive behavior with "a high degree of particularity Consequently, generalized allegations of civil antitrust violations are usually insufficient and the unlawful combination or conspiracy must be alleged with specificity." G.H.I.I. v. MTS, Inc., 147 Cal.App. 3d 256, 265 (1983) (citations omitted). Plaintiffs' claim under the Cartwright Act only alleges that PAL and PALS entered into an agreement to prevent competition in PAL tickets. Putting aside whether this would constitute a violation of the Cartwright Act, the claim must be alleged with greater specificity than this to survive.

Furthermore, California courts have been as reluctant as federal courts to apply anti-trust law to vertical restraints on trade, even where the conduct is clearly ant-competitive. In Gianelli, a beer manufacturer terminated eight local beer distributors and the distributors brought suit under the Cartwright Act. 172 Cal. App. 3d at 1031-32. The court found no violation of the Cartwright Act and noted, "A manufacturer of course generally has a right to deal, or refuse to deal, with whomever it likes, as long as it 4es so independently." I.d. at 1042. The test the court applied was whether the

plaintiff's competitors "used their economic power or position to influence the manufacturer to act, not for its own advantage, but solely for the advantage of those competitors.". Id. at 1047. Plaintiffs have made no such allegations here. Although they do allege that PAL conspired with PALS for the benefit of PALS, they do not allege that PAL did so as a result of undue influence or solely for the advantage of PALS. Furthermore, as noted above, these allegations are made with great generality.

Even more directly on point is Milton v. Hudson Sales Corp., 152 Cal. App. 2d 418 (1957). There the California court found no violation of the Cartwright Act had occurred when a car manufacturer and a car dealer planned together to terminate another dealership. In so holding, the court noted that a manufacturer may exercise his own independent discretion as to the parties with whom he will deal . . . Even an exclusive dealership is not per se invalid particularly where the article to be sold is in direct competition with the products of other manufacturers." Id. at 443-444.

Again, Plaintiffs' failure to plead an effect on interbrand competition is fatal to their claim. Even if PAL and PALS conspired together to terminate Sextant's GSA status, that would not violate the Cartwright Act under Milton as long as consumers have plenty of other ways to buy Philippine Airlines tickets. Accordingly, Plaintiffs' claim under the Cartwright Act is dismissed with leave to amend, provided Plaintiffs can state a legally recognizable claim.

E. California Unfair Practices Act

Plaintiffs' fourth claim, under the California Unfair Practices CA t, Cal. Bus. & Prof. Code S 17000 et seq. also fails to state a claim. This act "closely parallels the Robinson-Patman Act, and is based on the same policy considerations." G.H.I.I., 147 Cal. App. 3d at 271. Like the Robinson-Patman Act, a claim under this California law must allege an anti-competitive effect. Furthermore, "for competition to be unfair under the Act, the person

engaging in the challenged practice must possess an intent to injure his competitors or destroy his competition." Dooley's Hardware Mart v. Food giant markets, Inc., 21 Cal. App. 3d 513, 517 (1971). The California Unfair Practices Act "requires the plaintiff to prove not only injury to a competitor, but, in addition, tendency 'to destroy competition.'" ABC International Traders, Inc. v. Matsushita Electric Corp., 14 Cal. 4th 1247, 1262 (1997) (citations omitted).

Plaintiffs have alleged neither. Plaintiffs are not in competition with PAL, and thus any injury to them is not an injury to a competitor. Furthermore, as discussed above, even if Plaintiffs could reasonably allege that Defendants' behavior has injured other airlines, Plaintiffs do not have standing to bring such an action Accordingly, Plaintiffs' claims under the California Fair Practices Act are dismissed, with leave to amend provided Plaintiffs can state a legally cognizable claim.

F. Racketeer Influenced Corrupt Organizations Act (RICO)

Plaintiffs' fifth cause of action under the Racketeer Influence Corrupt Organizations Act (RICO), 18 U.S.C. S 1961, et seq. fails. Plaintiffs allege that PAL used threats intended to extort Plaintiffs' compliance with PAL'S "demands." Complaint ¶ 37. However, under both State and federal law, "extortion" is defined at the obtaining of property from another" induced by wrongful use of force or fear, or under cover of official right, among others. See 18 U.S.C. S 1951(b) (2); Cal. Penal Code S 518. Plaintiffs; does not allege that PAL obtained any property from them. Even if Sextant's former GSA status were considered property, Sextant no 1onger possessed it because the GSA contract between PAL and Sextant had lapsed in 1999 and had not been renewed. Accordingly, plaintiffs' RICO claim is dismissed with leave to amend, provided that Plaintiffs can state a legally cognizable claim.

H. Intentional Interference with Contractual Relations

Plaintiffs' sixth cause of action alleges that PAL's termination of Sextant's GSA status interfered with plaintiffs' agreements with their clients by terminating Sextant's ability to issue tickets for air travel on Philippine Airlines. The contracts Plaintiffs allege were interfered with are the "numerous agreements they have entered into since 1997 to provide tickets on Philippine Airlines. Complaint ¶ 41. Plaintiffs allege that when PAL terminated Sextant's GSA status, they could no longer supply "70% of Plaintiffs' clients requests for air travel tickets on Defendant's airline. Therefore, plaintiffs could not fulfill their promises to its [sic] clients to provide them with travel on Defendant PA's airline." Complaint ¶ 47.

To state a claim for intentional interference with contractual relations, Plaintiffs must plead: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; 3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting in damage." LiMandri v. Judkins, 52 Cal. App. 4th 326, 343-44 (1997) (citations omitted). Plaintiffs have failed to plead a valid contract. A unilateral promise to provide tickets is not a contract. Presumably such a contract was not created until the buyer paid Sextant for the airline ticket. Additionally, it seems unlikely that Plaintiffs would have outstanding contracts to provide tickets on PAL when Sextant had not been operating under a GSA since 1999, and thus could not guarantee its access to tickets at the GSA prices. Accordingly, Plaintiffs' claim for intentional interference with contractual relations is dismissed with leave to amend, provided that Plaintiffs can state a legally cognizable claim.

I. Intentional Interference with Prospective Economic Relations

Plaintiffs' seventh cause of action for intentional interference with prospective economic relations also fails to state a claim . California courts have held that "a

plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself.'" Della Penna v. Toyota Motor, 11 Cal. 4th 376, 392–93 (1995) (citations omitted). The interference at issue here is PAL's termination of Sextant's GS status. As discussed above, Plaintiffs have failed to allege that PAL 'engaged in wrongful conduct in deciding to terminate Sextant's GSA status in any of Plaintiffs' other causes of action and they fail to do so here. The only interference alleged at all is the act of terminating Sextant's GSA status. Because Plaintiffs have alleged no wrongful conduct on the part of PAL involved in its decision to terminate Sextant's GSA status, this claim fails. Accordingly it is dismissed, with leave to amend provided that Plaintiffs can properly plead it.

J. Injunctive Relief

Plaintiffs' eighth cause of action is for "injunctive relief." Injunctive relief is a remedy, not a separate claim. Because Plaintiffs have failed to plead any of their claims sufficiently, they are not entitled to injunctive relief. Furthermore, as discussed in the Court's order denying Plaintiffs' motion for a temporary restraining order, the relief requested essentially calls for this Court to enforce the GSA agreement, directly in contravention of the bankruptcy court's order.

K. Declaratory Relief

Plaintiffs' ninth cause of action is for "declaratory relief." Injunctive relief is a remedy, not a separate claim. Because Plaintiffs have failed to allege any of their other claims sufficiently, they are not entitled to declaratory relief.

CONCLUSION

For the foregoing reasons, PAL's motion is GRANTED (Docket No. 30). Plaintiffs' claim under the Robinson-Patman Act is dismissed without leave to amend. Plaintiffs' other claims are dismissed, with leave

to amend provided that Plaintiffs can state legally cognizable claims. At the hearing on this motion, the Court ordered Plaintiffs to file their amended complaint thirty days from the date of the hearing. Because the hearing was held on December 15, 2000, thirty days later was a Sunday and the following Monday was a federal holiday. Thus, the amended complaint was due on January 1, 2001. Plaintiffs did not file their amended complaint by this date. The Court grants Plaintiffs an additional ten days from the date of this order to amend their complaint. The case management conference scheduled for February 2, 2001, is vacated. Any motion to dismiss the amended complaint shall be filed within thirty days of the filing of the amended complaint. Additionally, the Court notes that Defendant PALS does not appear to have joined in this motion to dismiss or to have answered the complaint. It appears from papers filed with the Court that PALS was served with the complaint on the day it was filed, October 5, 2000. The Court directs Plaintiffs to seek entry of default against Defendant PALS, upon which entry the Court will consider a motion for default judgment.

IT IS SO ORDERED.

Dated: February 2,2001 s/CLAUDIA WILKEN
United States District Judge

Copies mailed to counsel as noted on the following page

FILE COPY
United States District Court
For the
Northern District of California
February 2, 2001
** CERTIFICATE OF SERVICE **
Case Number: 4:00 CV 03683

Sig Tyr Sig, Inc.
Vs
Philippine Airlines

I, the undersigned, hereby certify that I am an employee in the office of the clerk, U.S. District Court, Northern District

of California.

That on February 2, 2001, I SERVED a true and correct copy(ies) of the attached, by placing copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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s/ Richard W. Wieking, Clerk

By: _____
Deputy Clerk

[This document has been prepared in accordance with Supreme Court Rule 33]

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2001 FEB 12
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Richard Wieking, Clerk
U.S. District Court
Northern District of CA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, INC., a California corporation, and SEXTANT TRAVEL SERVICES,
Plaintiffs,
v.
PHILIPPINE AIRLINES, INC., a Philippine corporation, PACIFIC AIR LEISURE SERVICES, a California corporation, and DOES 1 through 99, inclusive,
Defendants.

Case No. C 00 3683 CW

PLAINTIFFS' FIRST AMENDED AND VERIFIED COMPLAINT FOR:

1. SHERMAN ACT VIOLATIONS
2. CARTWRIGHT ACT VIOLATIONS
3. VIOLATION OF CALIFORNIA UNFAIR TRADE PRACTICES STATUTES.
4. RICO ACT VIOLATIONS
5. INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS
6. INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS
7. INJUNCTION
8. DECLARATORY RELIEF

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff SIG TYR SIG, INC. ("PLAINTIFF STS") is a closely-held corporation organized and existing under the laws of the State of California.

2. Plaintiff SEXTANT TRAVEL SERVICES. INC. ("PLAINTIFF SEXTANT") is a California corporation and a wholly owned subsidiary of STS.

3. Defendant Philippine Airlines, Inc. ("DEFENDANT PA") is a corporation organized and existing under the laws of the Republic of the Philippines.

4. DEFENDANT PA is registered to conduct business in the State of California. Defendant Pacific Air Leisure Services ("DEFENDANT PALS") is a corporation organized and existing under the laws of the State of California.

5. Venue is proper in this Judicial District because both defendants conduct business within the State of California in the City and County of San Francisco, and much of the conduct at issue occurred within the State of California. In the City and County of San Francisco. Furthermore, both defendants' business offices are located within the State of California, in the City and County of San Francisco.

6. This Court has jurisdiction over the subject matter of the instant action in that the causes of action. Contained herein arise under the Constitution. laws. or treaties of the United States, or the form part of the same case or controversy under Article III of the United States Constitution.

7. The State of California as the forum state has personal jurisdiction over bat Defendants because defendants reside and conduct business in the State of California and avail themselves of the benefits and protections of the laws of the State of California.

8. Also, DEFENDANT PA contractually consented to giving personal jurisdiction to the City of San Francisco within the State of California.

9. SEXTANT TRAVEL SERVICES is a travel agency located and doing business in the State of California.

10. PLAINTIFFS, and each of them, are ignorant of the true names or capacities a the Defendants sued herein under the fictitious names Does I through 99, inclusive, and PLAINTIFFS will seek leave of court to amend this Complaint to allege such names and capacities as: soon as they are ascertained. PLAINTIFFS, and each of them, are informed and believe, and based on that information and belief alleged, that each of the Defendants designate s a Doe is legally responsible for the events and happenings referred to in this Complaint and lawfully caused the injuries and damages to PLAINTIFFS alleged in this Complaint.

11. PLAINTIFF is informed and believes arid thereon alleges that. at all relevant times herein, Defendants were the agents and employees of their co-Defendants and, in doing the things alleged in this Complaint were acting within the course and scope of that agency and employment.

FIRST CAUSE OF ACTION

(SHERMAN ACT VIOLATIONS)

12. PLAINTIFF hereby incorporates by reference the allegations in the above paragraphs 1 through 11 as if fully set forth herein.

13. DEFENDANT PA's and DEFENDANT PALS' actions as alleged herein constitute an• unlawful restraint of trade, and are unfair or fraudulent business practices in Violation of Section 1 of the Sherman Act (15 U.S.C. § 1 (1982)).

14. DEFENDANT PA arid DEFENDANT PALS conspired and/or acted unreasonably; or otherwise illegally, to restrain trade, directly, foreseeably, and substantially affecting interstate and/or foreign commerce, as set forth below:

A. Sometime. Prior to July of 2000, DEFENDANT PA provided PLAINTIFFS with a

computerized airline reservation booking system (the "reservation system"), which PLAINTIFFS were instructed to use for the booking of airline flights and the sale of tickets on those flights. Unknown to PLAINTIFFS, the reservation system did not * necessary inhibitions to prevent the booking of seats for which no ticket had been sold. thus "hanging" those seats and making them unavailable for booking to paying passengers. Because DEFENDANT PA was solely responsible for accounting for and reconciling seats booked on flights with chose for which tickets were sold, and because DEFENDANT PA was solely responsible for the design of the reservation system and the installation of software inhibitions to prevent the booking of unpaid and unticketed airline seats. DEFENDANT PA and not the PLAINTIFFS, was responsible for the overbooking of flights and "hanging" of seats that allegedly occurred as the result PLA1NTIFFS' use of DEFENDANT PA's reservation system.

B. Sometime during or before August of 2000, the PLAINTIFFS are informed and believe that several GSAs. Including DEFENDANT PALS. conspired to use the alleged "seat hanging" as an excuse to ask DEFENDANT PA to suspend and then subsequently terminate PLAINTIFFS' GSA agreement with DEFENDANT PA, thereby terminating PLAINTIFFS' ability to sell DEFENDANT PA's tickets and allowing the conspiring GSA's to divide the market for DEFENDANT PA's wholesale airline tickets, formerly serviced by PLAINTIFFS, among themselves. Considering that PLAINTIFFS were formerly the most successful GSAs in this market, with among the largest of market shares, the dividend to be reaped by the conspiring GSAs because of this market division was considerable. Furthermore, because DEFENDANT PALS is owned and/or controlled by the majority shareholder of DEFENDANT PA, DEFENDANT PA and its majority shareholder benefited directly from said unlawful division of the market for wholesale Philippine Airline tickets. A copy of a letter

sent by some of the aforementioned GSA's to DEFENDANT PA. dated August 8, 2000 and supporting the truth of PLAINTIFFS' allegations, is attached as Exhibit "A" to this Complaint and incorporated herein as though fully set forth.

C. In furtherance of the aforementioned conspiracy to illegally divide the market for wholesale Philippine Airline tickets. the conspiring GSAs held a meeting during the weekend of September 15 through 17, 2000, in the Republic of the Philippines, during which the aforementioned GSA's met with DEFENDANT PA's senior management to determine how the relevant market should be divided.

D. Because DEFENDANT PA's termination of Plaintiffs' GSA agreement was in breach of that agreement, and because said breach occurred as the result of a conspiracy by other GSAs to illegally divide the market for wholesale Philippine Airline tickets and thereby unlawfully restrain trade. including one GSA that was owned and/or controlled by the majority shareholder of DEFENDANT PA, DEFENDANT PA's termination of the GSA agreement was unlawful and in contravention of public policy.

E. In addition to the foregoing, DEFENDANT PA and DEFENDANT agreed, sometime on or about May of 2000, that the GSAs should be required to increase the minimum price at which they sell DEFENDANT PA's airline tickets.

F. The aforementioned agreements between two separate or affiliated corporations were unlawful in that they furthered a conspiracy or agreement that was intended to cause a breach of the GSA Agreement, thereby terminating a GSA's right to a competitive advantage over non GSAs.

15. Furthermore DEFENDANT PA's, airline directly, foreseeably, and substantially affects interstate or foreign commerce in that DEFENDANT PA's aircraft travel to and from the United States and provide the

predominant mode of conveyance for persons traveling to an from the Republic of the Philippines.

16. As a direct, foreseeable and proximate result of defendants' Sherman Act violations, PLAINTIFFS have suffered damages and continue to suffer damages, as set forth below.

17. PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS' violation of these laws, pursuant to 15 U.S.C. § 15.

SECOND CAUSE OF ACTION

(CART WRIGHT ACT VIOLATIONS)

18. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 17 as if fully set forth herein.

19. DEFENDANT PA's and DEFENDANT PALS' actions as alleged herein constitute an unlawful trust in violation of §16700, et seq. of the California Business and Professions Code (the "Cartwright Act").

20. DEFENDANT PA and DEFENDANT PALS. at the instance of other GSA's who desired to unduly influence DEFENDANT PA to terminate PLAINTIFFS' GSA agreement and hereby unlawfully divide the market for wholesale Philippine Airline tickets. created unlawful trust, or conspired to create an unlawful trust, by combining their capital, skill or acts or any and all of the following purposes:

A. To create or carry out unlawful restrictions in trade or commerce:

B. To fix at any standard or figure. whereby its price to the public or consumer shall be in any manner controlled or established, access wholesale Philippine Airlines tickets and Philippine Airlines' service intended for sale, barter, use or consumption in California;

C. To make, enter into. execute. or carry out any contracts, obligations or agreements of any kind or description, by which they could do all or any combination of the following:

a. Agree in any manner to keep the price of

Philippine Airlines tickets a fixed price or graduated figure;

b. Establish or settle the price of Philippine Airlines tickets between themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of Philippine Airlines tickets and or

c. Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any Philippine Airlines tickets, that its price might in any manner be affected.

21. As a direct, foreseeable and proximate result of defendants' Cartwright Act violations PLAINTIFF has suffered damages, and continues to suffer damages.

22. PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS' isolation of the laws, pursuant to Cal. Bus. & Prof. § 16750.

THIRD CAUSE OF ACTION

(VIOLATION OF CALIFORNIA UNFAIR PRACTICES ACT)

23. Plaintiffs hereby incorporate by reference the allegations in the above paragraphs 1 through 22 as if fully set forth herein.

24. DEFENDANT PA's and DEFENDANT PALS' violated California Unfair Practices Act (Business and Professions Code §§ 17000, et seq.), when they intentionally engaged in the following acts and/or conspiracies to act, in a manner so as to injure DEFENDANT PALS' competitor or to destroy competition. by doing any arid all of the following

A. The creation of locally discriminations As Airline The creation of locality discriminations in the sale of Philippine tickets with the intent to destroy the competition of PLAINTIFFS or any other regular established dealer in Philippine Airlines tickets that failed to cooperate with the conspirators' scheme to unlawfully

divide the market in restraint of trade;

B. The selling of Philippine Airlines tickets at less than cost, or the giving away of Philippine Airlines tickets for the purpose of injuring competitors or destroying competition;

C. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition;

D. The use of threats, intimidation, or boycott, to effectuate a violation o California Unfair Trade Practices laws

E. The solicitation of the violation of California Unfair Trade Practices laws, and/or

F. Collusion with others for the purpose of violating California Unfair Trade Practices laws;

25. As a direct, foreseeable and proximate result of defendants' Unfair Trade Act violations PLAINTIFF has suffered damages, and continues to suffer damages.

26 PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS' violation of these Laws, pursuant to Cal. Bus. & Prof. § 17070.

FOURTH CAUSE OF ACTION

(VIOLATION OF RICO ACT)

27. Plaintiffs hereby' incorporate by reference the allegations in the above paragraphs h through 26 as if fully set forth herein.

28. DEFENDANT PA's and DEFENDANT PALS' actions as alleged here constitute a violation of 18 U.S.C. §§ 1961-1964 (the "Racketeer Influenced Corrupt Organization Act").

29. On or about October 6. 2000. as a consequence of DEFENDANT PA's unlawful termination of PLAINTIFFS' GSA agreement, DEFENDANT PA

unlawfully seized a bank account held in the name of PLAINTIFF SEXTANT and containing in excess of One Hundred Thousand Dollars ($100,000.00). A copy of the letter of instructions and debit memo resulting the unlawful seizure are attached as Exhibit "B" to this complaint and incorporated herein as though fully set forth.

30. By use of threats intended to extort the Plaintiffs' compliance with the defendants' demands. and while engaged in or affecting interstate commerce, DEFENDANT PA and DEFENDANT PALS received income derived, directly or indirectly, from a pattern of racketeering activity, where the Defendants participated as principals within the meaning of 1 U.S.C. § 2, to use, or invest, directly or indirectly, any part of such income, or the proceeds of such income.

31. As a direct, foreseeable and proximate result of defendants' RICO Act violations, PLAINTIFF has suffered damages and continues to suffer damages.

32. PLAINTIFFS are entitled to recovery of attorney's fees for DEFENDANTS violation of these laws, pursuant to 18 U.S.C. § 1964.

FIFTH CAUSE OF ACTION

(INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS)

33. PLAINTIFF hereby incorporates by reference the allegations in the above paragraphs 1 through 32 as if fully set forth herein.

34. From on or about February of 1996 to the present, PLAINTIFFS have entered into numerous agreements with their subcontractors pursuant to which its subcontractors agreed use PLAINTIFFS' travel services and PLAINTIFFS agreed to provide such services.

35. From on or about February of 1996 to the present, PLAINTIFFS and the subcontractors have entered into numerous contracts with their customers who have purchased tickets to travel on DEFENDANT PA's airline.

36. DEFENDANT PA knew of the above

described contractual relationships between PLAINTIFFS sand PLAINTIFFS' subcontractors, and the customers of PLAINTIFFS and their subcontractors, in that PLAINTIFFS had booked travel for these persons on DEFENDANT PA's airline since on or about February of 1996.

37. PLAINTIFFS and DEFENDANT PA, via Defendant Pacific Air Leisure Service "DEFENDANT PALS"), compete in the travel industry. DEFENDANT PA is intertwined with and has a vested interest in DEFENDANT PALS. DEFENDANT PALS is a GSA, similar to PLAINTIFFS. DEFENDANT PALS and PLAINTIFF compete in the same market for subcontractors and airline customers, selling DEFENDANT PA's passenger air transportation services in exchange for incentive commissions on those. sales.

38. DEFENDANT PA has a vested interest in protecting DEFENDANT PALS from competition against other GSAs, such as PLAINTIFFS, for the following reasons:

a. Rowena Chua, the daughter of DEFENDANT PA's controlling shareholder Lucio Tan, once owned, or now continues to own or otherwise exercise control over, DEFENDANT PALS.

b. As a result of an anti-trust law suit. Ms. Chua transferred ownership of DEFENDANT PALS to Kim Tia, the former nanny of Mr. Tan's children or to some other person who stands in a relationship of trust and confidence with Mr. Tan.

c. DEFENDANT PA created an 8 member committee charged with advising DEFENDANT PA on its United States operations. DEFENDANT PALS. through its owners and/or management representatives, sits on this committee. A copy of the letter creating this relationship, and dated March 14, 1997 is attached as Exhibit "C' to this Complaint and incorporated herein, as though fully set forth.

d. DEFENDANT PA gave DEFENDANT PALS a preferred sublease in its building floor. DEFENDANT

PA never notified nor asked for bids on the sublease from other GSAs. Instead, DEFENDANT PA automatically chose DEFENDANT PALS as the recipient of the sublease because of the close relationship between DEFENDANT PA and DEFENDANT PALS.

39. Because DEFENDANT PA, via DEFENDANT PALS, and PLAINTIFF compete each other in the market for tickets for air travel on DEFENDANT PA's airline d because DEFENDANTS PA and PALS have unlawfully conspired with other GSA's to terminate PLAINTIFFS GSA agreement and unreasonably restrain trade. DEFENDANT PA has a vested interest in terminating PLAINTIFFS' ability to ticket air transportation on DEFENDANT PAL's airline so that PLAINTIFFS' subcontractors and customers will go to DEFENDANT PALS and other GSA's. benefiting both defendants. In addition, DEFENDANT has denied replenishing PLAINTIFFS' ticket supply upon Plaintiffs' repeated written requests; has refused to refund customer fares when such refunds are deserved; and has failed to pay the TIP sales commissions owed to Plaintiffs. Lastly, DEFENDANT PA has suspended PLAINTIFF SEXTANT'S GSA status.

40. DEFENDANT PA has interfered with Plaintiffs' agreement with PLAINTIFFS' subcontractors, customers, and others by unlawfully suspending PLAINTIFF SEXTANT'S ability, as a GSA, to ticket air transportation on DEFENDANT PA's airline.

41. When DEFENDANT PA suspended PLAINTIFF'S GSA status, PLA1NTIFF could no longer supply 70% of PLAINTIFFS' clients' requests for air travel tickets on DEFENDANT PA's airline at competitive prices. Therefore, Plaintiff could not fulfill its promises to its clients to provide them with travel on DEFENDANT PA's airline at a competitive price.

42. *As* an actual and proximate result of DEFENDANT PA's intentional interference, PLAINTIFFS have suffered damages as set forth below.

43. DEFENDANT PA's acts are willful, malicious, despicable and in conscious disregard of PLAINTIFFS' rights, in that DEFENDANT PA's acts are intended to wrongfully withhold sums of money owed to PLAINTIFFS and/or terminate PLAINTIFFS' ability to conduct business.

SIXTH CAUSE OF ACTION

(INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS)

44. PLAINTIFF hereby incorporates by reference the allegations in the above paragraphs through 43 as if fully set forth herein.

45. DEFENDANT PA's conduct intentionally and wrongfully interferes wit Plaintiffs prospective economic relations in that Plaintiff's ability to ticket travel on DEFENDANT PA's airline has been drastically restricted. DEFENDANT PA's actions make it impossible for PLAINTIFF to meet the requirements of its current clients because DEFENDANT PA refuses to issue sufficient tickets to PLAINTIFFS under reasonable terms or at competitive prices, contrary to DEFENDANT PA's past action. As a result, PLAINTIFFS are unable to form relations with new clients because PLAINTIFFS' ability to ticket air travel on DEFENDANT PA's airline has been so severely restricted.

46. DEFENDANT PA's conduct is unlawful for reasons given in the other causes of action stated in this Complaint.

47. DEFENDANT PA's conduct was the direct, actual and proximate cause of PLAINTIFFS losing their ability to ticket air transportation on DEFENDANT PA's airline an therefore the direct, actual and proximate cause of Plaintiffs having to notify PLAINTIFFS' clients of PLAINTIFFS' inability to perform the terms of Plaintiffs' agreements With PLA1NTIFFS clients.

48. DEFENDANT PA's acts are willful, malicious, reckless, despicable and in disregard of PLAINTIFFS' rights, in that DEFENDANT PA's acts are

intended to wrongfully extort unsubstantiated sums of money from PLAINTIFFS and/or terminate PLAINTIFFS' ability to conduct business.

49. Because of DEFENDANT PA's willful and malicious or reckless conduct PLAINTIFFS are entitled to an award of attorneys fees.

SEVENTH CAUSE OF ACTION

(INJUNCTIVE RELIEF)

50. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs I through 49 as if fully set forth herein.

51. PLAINTIFFS are informed arid believes and based thereon alleges that DEFENDANT PA continues, and intends to continue, in the future to engage in the conduct alleged herein.

52. The actions of DEFENDANT PA as herein alleged, have interfered with PLAINTIFFS ability to conduct business as a consolidator. In fact, at least two of PLAINTIFFS customers have refused to continue working with PLAINTIFFS based on DEFENDANT PA's penalizing actions against PLAINTIFFS. PLAINTIFFS have suffered and continue to suffer irreparable harm as a result of said actions.

53. For the foregoing reasons. and each of them. PLAINTIFFS are entitled to preliminary and final injunctive relief against DEFENDANT PA as follows:

(a) Enjoining DEFENDANT PA from denying PLAINTIFFS' access to Philippine Airlines tickets on the same terms and conditions as GSA's generally;

(b) Enjoining DEFENDANT PA from price discrimination in the sale of its tickets to PLAINTIFFS, including payment of any commissions, rebates, or other incentives normally paid to GSA's generally;

(c) Divesting DEFENDANT PA and DEFENDANT PALS from any and all management and/or ownership of each other's enterprises or other businesses;

(d) Ordering DEFENDANT PALS to vacate the

premises it shares with DEFENDANT PA at DEFENDANT PA's San Francisco, California, headquarters, until such time the same may be made available to the bids of other GSA's on an equal basis.

EIGHTH CAUSE OF ACTION

(DECLARATORY RELIEF)

54. PLAINTIFFS hereby incorporate by reference the allegations in the above paragraphs 1 through 53 as if fully set forth herein.

55. PLAINTIFFS ask the court for a determination of whether any of their rights were violated under applicable federal and state laws and the extent of the harm that occurred as consequence of those violations.

PRAYER FOR RELIEF

WHEREFORE PLAINTIFFS pray for relief as to all causes of action as follows:

1. Temporary. preliminary, and permanent injunctive relief as prayed herein:

2. For attorneys' fees and costs of suit incurred herein; and,

3. For such other and further relief as the Court deems just and proper.

Dated: February 12, 2001 ALEXANDER ANOL1K,
A Professional Law Corporation
s/by: Alexander Anolik. Esq.
Alexander Anolik.

Esq.

Attorneys for Plaintiff
Sig Tyr Sig, Inc. and
Sextant Travel Services, Inc.

VERIFICATION

I, J. Manuel Diaz, declare that:

I am the Chief Executive Officer and President of the Plaintiffs in this action. I have read PLAINTIFFS' FIRST AMENDED AND VERIFIED COMPLAINT and I am familiar with the contents thereof, and that the allegations therein are true and correct the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing responses are true and correct.

Executed on this 12th day of February 2000, in San Francisco, California.

s/By: J. Manuel Diaz

J. Manuel Diaz

[This document has been prepared in accordance with Supreme Court Rule 33]

[EXHIBIT "A" to Plaintiff's First Amended and Verified Complaint]

08 August 2000
Mr. Lucio Tan
Chairman, Philippine Airlines
6754 Ayala Avenue
Maktai, Metro Manila
Philippines

Dear Mr. Tan:

We are writing you this letter for the sake of our economic survival. We are a group of concerned GSAs and are appealing to your humble senses.

It is now common knowledge that as a result of the investigation conducted with regard to allegations of illegal seat blocking by Sextant Travel, Philippine airlines has rightfully concluded that Sextant Travel is guilty of this despicable business practice.

As you very well know, there yet have to be sanctions to be imposed on the matter and we are so afraid that it would be whitewashed. Illegal seat blocking is immoral and unjust. Immoral because it is a breach of trust and confidence and unjust because it places Sextant Travel on an unfair economic advantage over us, his competitors.

Sextant Travel must not be allowed to profit from its own wrongdoing when it fraudulently carried out its plan to deceive Philippine airlines and the rest of the GSAs because Sextant should never have achieved the level of sales volume to entitle it to any incentive award and PAL should not be placed in a position of incurring this

deplorable expense at a time when the carrier is in the middle of difficult financial and labor retrenchment.

We firmly believe that this transgression committed by Sextant must not be left unpunished nor easily forgotten and that Philippine Airlines must provide assurances that the practice of illegally blocking seats be permanently eradicated. Toward this end, we strongly urge that PAL be in the forefront of installing meaningful safeguards and that future violations shall result in stiff penalties and harsh measures. This will send the message that Philippine airlines will never condone or tolerate this disgraceful act and that the carrier always treats all its GSAs fairly and uniformly.

We are loyal professionals who work hard to promote Philippine airlines and would never jeopardize our esteemed business relationship with you.

We honestly feel that we deserve the secured feeling that Philippine airlines is doing all it can to make sure that our livelihood and business dealings are never compromised.

Mr. Chairman, we can only look up to you and count on you because you are the only person who can make a difference. Please do not fail us in our hopes and aspirations to make the playing field even. With God's blessings, we are confident that you will deal with this situation to the best of your integrity and for which we have always known you for. As always, we genuinely appreciate your time and effort to address our much needed plea even in the mist of your full schedule. Rest assured, that WE, your loyal GSAs will continue to be behind you in your efforts to make PHILIPPINE AIRLINES a success.

Very truly yours,
[numerous signatories, next page]

[Signatories to EXHIBIT "A" - Letter of 08 August 2000 to Lucio Tan]

s/ Annie Cheng
Annie Cheng - A&A Travel

Josefina Seberger - Air Cruise System

Eric Gague - Air Travel Center

s/ Lagrimas Gonzalez
Lagrimas Gonzalez

Zenaida Walker - LBC Travel

s/ Violeta Javier
Violeta Javier - Leisure Life -LAX

s/ Yolanda Obra
Yolanda Obra - Pacific Air - LAX

s/ Flor Rodriguez
Flor Rodriguez - Travel Best

s/ Evelyn Hingada
Evelyn Hingada-Leisure Life-San

s/ Kim Tia
Kim Tia - Pacific Air-SFO

[This document has been prepared in accordance with Supreme Court Rule 33]

[Following documents are EXHIBIT "B" to Plaintiff's First Amended and Verified Complaint; note: original document is somewhat illegible]

ATTN: AL ANOLIK

[Letterhead] Philippine Airlines, Inc.

05 October 2000

Oceanic Bank
130 Battery Street
San Francisco, CA 94111

Subject: STANDBY LETTER
OF CREDIT 98 6160 [?]
A/C SEXTANT TRAVEL SERVICE, INC.
DBA SEXTANT TRAVEL SERVICE
500 SUTTER STREET,
SUITE 430, SF CA 94102

We, the undersigned, Philippine airlines, Inc. hereby certify that Sextant Travel Service, Inc., dba Sextant Travel Service, (the "General Sales Agent") has filed to perform its obligations in accordance with the terms and conditions of the existing General Sales Agency Agreement between the General Sales Agent and [ourselves--illegible] and that the amount of One Hundred Thousand Dollars Only ($100,000.00), is by reason thereof due to ourselves.

Very truly yours,
s/ Gloria Ty
GLORIA J. TY
Regional Controller-Americas
PHILIPPINE AIRLINES, INC.

[Address at bottom illegible]

[This document has been prepared in accordance with Supreme Court Rule 33.]

[Bank draft of Oceanic Bank referenced in preceding Exhibit "B" letter; original fax copy is somewhat illegible.]

ATTN: AL ANOLIK

[LOGO] OCEANIC BANK Original Documents
P.O. Box [illegible], San Francisco, CA
U.S.A.
Fax No. 362-7547
Attn: Mr. J. Manuel Diaz

We are enclosing the below mentioned documents
Date October 4, 2000
[Illegible] Philippine Airlines, Inc.
[Illegible numbers] Draft Amount: US$ 100,000.00
[Illegible]-6160 [Illegible] Our Commission: $250.00
From To [Blanks] ____ Commission:
Other, Postage, Fax, etc. $5.00
Total: US$ 100,255.00

Mail To:
Sextant Travel Service
Dba Sextant Travel Service
500 Sutter Street, Suite 430
San Francisco, CA 94102

1st Mail [Illegible Headings, Form Is Blank]
2nd Mail
For the total Amount
__ We have debited your account
X [Illegible handwriting and some figures]
OCEANIC BANK s/ Illegible signature

[This document has been prepared in accordance with Supreme Court Rule 33]

[Exhibit "C" to Plaintiffs' First Amended and Verified Complaint; letter from Philippine Airlines on their letterhead, no legible address evident]

Stamped: "RECEIVED MAR 17 1997
DISTRICT SALES OFFICE, SFO"

PHILIPPINE AIRLINES
Lucio C. Tan
Chairman and Chief Executive Officer
14 March 1997
To: Mr. Carlos Gonzalez
OIC-Americas
Subject: U. S. Region
Effective today 14 March 1997, all major Administrative, Sales & Marketing, Operational matters must be approved by the Committee composed of the following:

1. Mr. Carlos Gonzalez
2. Ms. Kim Tia
3. Mr. Adrian Ingles
4. Mr. Bert Lim
5. Ms. Gloria Ty
6. Mr. Phillip Go
7. Leonor Lx'O
8. Minda de Santos

No personnel movement shall be made in the U.S. Region during interim period of one year from above date unless authorized in writing by the undersigned or his duly authorized representative.
Day to day handling of office matters by the various offices of the Region shall be handled by their respective Managers.
All Travel Orders of the above committee members must have prior approval from either the VP/Executive Assistant to the chairman & CEO, Mr. Henry So Uy or the

corporate Secretary and SVP-Corporate Counsel, Atty. Antonio V. Ocampo.

For strict compliance.

s/ illegible

*Por Chmn/CEO on 3/16/97 Meeting.

cc: Mr. Antonio Garcia-President & COO
Mr. Manolo E. Aquino-EVPAdministration & Services
Atty. Antonio V. Ocampo-SVP Corporate Secretary & Corp. Counsel
Mr. Avelino L. Z[illegible]-SVP-Sales & Services
Mr. Henry So Uy-Vice Pres & Exec. Asst to the Chairman & CEO

[This document has been prepared in accordance with Supreme Court Rule 33]

Alexander Anolik, Esq. SBN: 024685
Jordan Lavinsky, Esq., SBN: 192215
2107 Van Ness Avenue, Suite 200
San Francisco, CA 94109
Telephone: (415) 673-3333
Fax: (415) 673-3548

ORIGINAL FILED
FEB 12 2001
Richard Wieking
Clerk U.S. District Court
Northern District of CA
Oakland

Attorneys for Plaintiffs Sig Tyr Sig, Inc., and Sextant Travel Services

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, INC., a California corporation, and SEXTANT TRAVEL SERVICES, Plaintiffs, v. PHILIPPINE AIRLINES, INC., a Philippine corporation, PACIFIC AIR LEISURE SERVICES, a California corporation, and DOES 1 through 99, inclusive, Defendants.	Case No. C003683-CW PROOF OF SERVICE [STAMP: BY FAX]

PROOF OF SERVICE [C.C.P. 1013(A)]

Sig Tyr Sig, Inc. v. Philippine Airlines, Inc.,
NCDC#C00-3683-CW

I am employed in the County of San Francisco, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 2107 Van Ness Avenue, Suite 200, San Francisco, California 94109. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, such correspondence would be deposited with the United States Postal Service the same day in the ordinary course of business.

On the date of execution of this declaration, I served the attached on the interested parties in said cause as follows:

Plaintiffs' First amended Verified Complaint

Via Fax & First Class Mail

Roderick McLeod, Esq.
Brobeck, Phleger & Harrison
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

Rene C. Fernando, Esq.
255 N. Market Street
Suite 265
San Jose, CA 95110

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and this declaration was executed on February 12, 2001 at San Francisco, California.

/s Pamela Kibrick
Pamela Kibrick

FRIDAY, APRIL 27, 2001 10:44 A.M.

PROCEEDINGS

THE CLERK: CALLING THE MATTER OF SIG TYR SIG VERSUS PHILIPPINE AIRLINES, CIVIL C00-3683 AND PHILIPPINE AIRLINES VERSUS DIAZ, C01 – 0588.

MR. MC LEOD: GOOD MORNING, YOUR HONOR. RON MC LEOD, BROBECK, PHLEGER & HARRISON FOR PHILIPPINE AIRLINES ON ALL THREE MOTIONS.

MR. ANOLIK: ALEXANDER --

THE COURT: BOTH CASES.

MR. ANOLIK: -- ANOLIK AND ANTHONY PALIK ON BEHALF OF SIG TYR SIG.

THE COURT: GOOD MORNING.

MR. FERNANDO: GOOD MORNING, YOUR HONOR. RENE FERNANDO FOR PACIFIC AIR LEISURE SERVICES JOINING IN THE MOTION OF PHILIPPINE AIRLINES TO DISMISS THE FIRST AMENDED COMPLAINT AND THE OBJECTION TO DISMISS -- VOLUNTARILY DISMISS THE SHERMAN ACT AND CARTWRIGHT ACT CLAIMS AGAINST PHILIPPINE AIRLINES.

THE COURT: OKAY. WELL, LET ME ASK FIRST, I NOTICE THAT A MR. PALIK HAS BEEN SIGNING THE PAPERS BUT PUTTING THE MASTHEAD OF MR. ANOLIK'S FIRM WITHOUT MR. PALIK'S NAME ON IT AND WITH NO STATE BAR NUMBER FOR MR. PALIK. I'M WONDERING IF MR. PALIK IS A MEMBER OF THE STATE BAR AND WHETHER HE'S A MEMBER OF YOUR FIRM, AND WHO EXACTLY IS REPRESENTING THESE PLAINTIFFS HERE.

MR. ANOLIK: AS A FORMER STATE COURT JUDGE, YOUR HONOR, I WOULD NEVER HAVE ANYONE WHO WASN'T AN ATTORNEY. MR. PALIK DOES WORK FOR US. HE WAS IN OUR OFFICE. HE NOW MOVED UP TO SACRAMENTO, BUT DOES ABOUT 25 HOURS A WEEK FOR US. HE COULD

RECITE THE STATE BAR NUMBER FOR YOU, YOUR HONOR.

THE COURT: WELL, WHAT I'M WONDERING IS WHY IS HE NOT LISTED ON THE LIST OF ATTORNEYS REPRESENTING PLAINTIFF ON THE FIRST PAGE OF THE PLEADINGS?

MR. ANOLIK: HE CERTAINLY WILL BE. IF HE WAS NOT, IT WAS AN OVERSIGHT. HE DID THE WORK. JORDAN AND I ARE BASICALLY THE ONES WITH THE CASE AND ANTHONY WAS HELPING US OUT, AND IF HE SIGNED SOMETHING HIS NAME WILL CERTAINLY BE THERE. I -

THE COURT: OKAY. NEXT, WE HAD A SANCTIONS MOTION THAT WAS NOTICED FOR THE 22ND OF -- I'M SORRY FOR THE 11TH OF MAY, AND I DID TAKE THAT OFF CALENDAR TO DECIDE IT ON THE PAPERS. BUT I REALIZE THAT IF I WERE TO GRANT RULE 11 SANCTIONS, I WOULD NEED TO PROVIDE AN OPPORTUNITY TO ADDRESS THOSE. SO I WILL PROVIDE THAT OPPORTUNITY, AND THAT WILL BE TODAY, BECAUSE IT'S BASICALLY THE SAME ISSUES AS THE MOTION TO DISMISS.

MR. ANOLIK: THANK YOU, YOUR HONOR.

THE COURT: THE OPPOSITION HAS ALREADY BEEN RECEIVED. PERHAPS A REPLY MAY COME IN, BUT AT LEAST THE MOTION AND THE OPPOSITION ARE ON FILE, AND WE'LL ADDRESS BOTH SUBJECTS WITH RESPECT TO THE MOTION TO DISMISS.

MR. ANOLIK: IF I MIGHT, YOUR HONOR, IF I COULD GIVE A SHORT OVERVIEW OF THE CRIMINALITY THAT HASN'T REALLY, I THINK, BEEN EXPRESSED BY MR. PALIK IN HIS FIRST APPEARANCE IN A SHORT EXPLANATION OF WHY THIS CASE IS AS SERIOUS AS IT IS, I WOULD APPRECIATE IT, AND IT WILL HELP TO UNDERSTAND OUR INTERFERENCE WITH CONTRACTUAL RELATIONS, OUR UNFAIR

COMPETITION, AND THE INTERFERENCE, AND CERTAINLY THE RICO ACTIONS, BECAUSE THERE --I THINK THERE'S BEEN A MISCOMPREHENSION INITIALLY BY PHILIPPINE AIRLINES. THERE WAS A QUOTE OF ME IN MY BOOK --

THE COURT: BEFORE YOU GET TO THAT, I HAD A COUPLE OTHER PRELIMINARY MATTERS THAT I WISHED TO RAISE -

MR. ANOLIK: PLEASE, YOUR HONOR.

THE COURT: -- IN ADDITION TO THOSE I ALREADY RAISED, AND THAT IS I RECEIVED THIS MORNING -- AND I DON'T KNOW IF YOU RECEIVED TWO NEW AFFIDAVITS FROM TWO WITNESSES.

MR. PALIK: I'VE GOT THAT HERE.

MR. MC LEOD: I HAVE NOT RECEIVED THEM, YOUR HONOR.

THE COURT: - OKAY. THEY ARE BASICALLY TWO STATEMENTS FROM I GUESS RETAIL TRAVEL AGENT TYPES WHO ARE PURPORTING TO SAY THAT THEY HAD ORAL REQUIREMENTS CONTRACTS WITH SEXTANT TO PROVIDE THEM AIRLINE TICKETS AT COMPETITIVE PRICES FULFILLING THEIR REQUIREMENTS, WITH THE GIST OF IT BEING, I GUESS, TO ATTEMPT TO SHOW THAT THESE ARE, IN FACT, CONTRACTS THAT SEXTANT HAD WITH THIRD PARTIES RELEVANT, I PRESUME, TO HIS CLAIM THAT SUCH CONTRACTS WERE INTERFERED WITH BY PHILIPPINE AIRLINES. SO . . . ACTUALLY, WHY DON'T WE JUST STOP FOR A MINUTE AND LET MR. MC LEOD TAKE A LOOK AT THOSE AFFIDAVITS. THEY ARE BOTH SHORT, AND THE ONLY -- THE VERY LAST PARAGRAPH OF EACH, AND THEY ARE BOTH THE SAME EXCEPT ONE HAS SOMETHING ADDED TO IT.

MR. MC LEOD: I'VE REVIEWED IT, YOUR HONOR. IT'S THE SAME.

THE COURT: OKAY.

MR. ANOLIK: I HAVE GIVEN COUNSEL PRIOR -- WHAT I WANT TO BRIEFLY DISCUSS WITH THE COURT, A CONSENT DECREE THAT PHILIPPINE AIRLINES HAD ENTERED INTO AND THE RELEVANT LAW, AND I HAVE A COPY FOR THE COURT. THEY EACH HAVE A COPY.

THE COURT: OF THE CONSENT DECREE ENTERED INTO RECENTLY OR SOME OTHER TIME?

MR. ANOLIK: NO, THIS WAS -- THIS EXPLAINS THE WHOLE SCENARIO. SO FAR EVERYBODY HAS BEEN LOOKING AT MR. DIAZ AS A TRAVEL AGENT. IT IS MY POSITION THAT HE REALLY IS IN A DIFFERENT POSITION.

(COUNSEL HANDS COURT BOOK AND DOCUMENTS.)

THE COURT: I CAN'T TAKE A BOOK. WHY ARE YOU HANDING A BOOK?

MR. ANOLIK: THE REASON IS THERE -- THE CONSENT DECREE THAT -- SINCE I WAS QUOTED, AND ALL OF THE SENTENCE WAS NOT PUT INTO -- OR ALL THE PARAGRAPH WAS NOT PUT INTO THE PLEADINGS BY COUNSEL, I AM SHOWING THE BOOK. I DON'T HAVE THE ORIGINAL CONSENT DECREES. THE REASON IT CAME UP, AND THE REASON IT HAS NOT BEEN PHOTOED, IS TO SHOW THE AUTHENTICITY OF IT. I DON'T HAVE THE SIGNED CONSENT DECREES, BUT I WOULD REPRESENT TO THE COURT THAT I WAS ONE OF THE ATTORNEYS FOR TWO OF THE OTHER AIRLINES AT THE TIME THAT THE CONSENT DECREE WAS ALSO ENTERED INTO PHILIPPINE AIRLINES, AND HOW WE HAVE THE SCENARIO OF THESE GENERAL SALES AGENTS WHO, IN ESSENCE, ARE -- THE ONLY TERM I CAN PUT IT --ARE BAGMEN FOR THE AIRLINE.

THE COURT: OKAY.

MR. ANOLIK: THERE IS A -

THE COURT: WE'RE GETTING AHEAD OF OURSELVES HERE. WE NEED TO RESOLVE THE

INITIAL PROBLEMS OF THINGS BEING HANDED TO ME THAT I CAN'T ACCEPT.

SHEILAH, WILL YOU GIVE THAT BOOK BACK TO HIM?

(COURTROOM DEPUTY HANDS COUNSEL BOOK.)

THE COURT: I JUST CAN'T HAVE YOU HAND ME A BOOK IN OPEN COURT. I CAN'T ACCEPT A BOOK. IT'S NOT A PLEADING, IT'S NOT AN EXHIBIT, IT'S NOT EVIDENCE. IF THERE'S SOMETHING IN A BOOK THAT YOU WISH TO PRESENT AS EVIDENCE OF SOMETHING, YOU NEED TO COPY IT AND ATTACH IT TO A DECLARATION, AND FILE IT, AND SERVE IT, AND SO ON.

AND THESE OTHER TWO PIECES OF PAPER YOU HANDED TO ME, I DON'T KNOW WHAT THEY ARE. I CAN'T ACCEPT PIECES OF PAPER FROM ONE SIDE THAT AREN'T SERVED ON THE OTHER SIDE AND AREN'T PART OF THE COURT'S RECORD.

I DON'T KNOW IF YOU WANT THESE TO BE MARKED AS EXHIBITS AND OFFERED. I DON'T KNOW WHAT YOU WANT.

MR. ANOLIK: I WANTED THE COURT TO TAKE JUDICIAL NOTICE, AND THAT IS THE ONLY REASON THAT I BROUGHT THOSE.

THE COURT: I CAN'T TAKE JUDICIAL NOTICE OF PRINTOUTS.

MR. ANOLIK: THAT THESE ARE 49 U.S.C. STATUTES.

THE COURT: IF THESE ARE STATUTES, YOU CAN JUST CITE ME THE TITLE OF THE STATUTE AND JUDICIAL NOTICE ISN'T EVEN NECESSARY TO -

MR. ANOLIK: IT'S 49 U.S.C. 46309 AND 49 U.S.C. 41510.

THE COURT: OKAY. WELL, THOSE -

MR. ANOLIK: AND I HAVE AN EXPLANATION FOR THE LAST –THE COURT: AND THESE HINGS ARE NOT BRIEFED IN YOUR BRIEF, I TAKE IT?

MR. ANOLIK: THEY ARE NOT BRIEFED. THEY TALK ABOUT ILLEGALITY, AND I CAN EXPLAIN WHY THEY WEREN'T UNTIL 6:00 A.M. THIS MORNING, WHY THEY'RE APPEARING IN THE FORM THAT THEY ARE. I KNOW THIS IS NOT THE COURT'S PROCEDURE, IT IS CERTAINLY SLOPPY PROCEDURE, BUT THERE IS A REASON FOR IT. AND IT'S SO IMPORTANT TO THE CASE THAT I WOULD ASK THE COURT TO HEAR A BRIEF EXPLANATION AS TO WHY I HAVE THE AUDACITY EVEN TO HAND YOU A BOOK AND NOT A PLEADING, YOUR HONOR.

THE COURT: OKAY.

MR. MC LEOD: YOUR HONOR, IF I COULD JUST HELP THE COURT IN DECIDING WHETHER IT WANTS TO HEAR THIS, I'VE READ THEIR CONSENT ORDER. IT'S A 1976 CONSENT ORDER WITH A FIVE-YEAR TERM. IT HAD TO DO WITH GETTING A GROUP OF AIRLINES TO AGREE THAT THEY WERE GOING TO ABIDE BY THE TARIFF RATES SET IN WASHINGTON. IT HAS NO APPLICABILITY HERE.

THE COURT: OKAY. I WILL ALLOW MR. -- SINCE I AM CONSIDERING SANCTIONS I WILL ALLOW MR. ANOLIK TO SAY WHATEVER IT IS HE WOULD LIKE TO SAY -

MR. MC LEOD: ALL RIGHT, YOUR HONOR.

THE COURT: -- AND YOU CAN RESPOND IN WHATEVER WAY YOU WOULD LIKE TO WHEN HE'S FINISHED.

MR. ANOLIK: BRIEFLY, YOUR HONOR, IN AIRLINE'S OPPOSITION PAPERS THEY CITED ONE OF MY TEXTS, <u>THE LAW AND THE TRAVEL INDUSTRY</u>, AS TO MY COMMENTS AS TO LEGALITY OF THE ANTITRUST STATUTES.

THE COURT: TRUE.

MR. ANOLIK: BOTH OF THOSE HAVE BEEN DROPPED. I STILL RELIEVE THEY HAVE MERIT, BUT THE CLOSENESS -- IN LISTENING TO THE COURT

WANTING TO SEE A REVISED COMPLAINT, I BELIEVE WE COMPLIED WITH THE COURT THERE. BUT WHAT REALLY IS -

THE COURT: MY PROBLEM WITH THEM IS THAT, EVEN THOUGH YOU HAVE NOW MOVED TO DISMISS THEM WITHOUT PREJUDICE, THE PROBLEMS WITH THEM WERE EVIDENT AT THE LAST HEARING, AND INSTEAD OF FILING AN AMENDED COMPLAINT THAT DID NOT INCLUDE THEM, YOU FILED AN AMENDED COMPLAINT THAT DID INCLUDE THEM. AND INSTEAD OF DISMISSING THEM PRIOR TO THE NECESSITY OF A FURTHER MOTION TO DISMISS THEM, YOU PUT THE DEFENDANTS TO THE EXPENSE OF FILING THAT MOTION TO DISMISS BEFORE VOLUNTARILY DISMISSING THEM. SO THAT CONCERNS ME FROM A RULE 11 STANDPOINT.

MR. ANOLIK: IF I CAN EXPLAIN WHY, AND IT WASN'T UNTIL THIS MORNING THAT I WAS ABLE TO GET THE PROOF THAT I NEEDED. IN THE '70'S, THE GOVERNMENT ENFORCED THE TARIFFS MUCH STRONGER THAN THEY DO NOW, INTERNATIONAL TARIFFS.

WHEN AN AIRLINE SUCH AS PHILIPPINE AIRLINES WISHES TO FLY TO THE UNITED STATES THERE ARE BILATERAL AGREEMENTS BETWEEN OUR EXECUTIVE AND THOSE OF THE FOREIGN GOVERNMENT. WHAT HAD HAPPENED IS THAT THE INTERNATIONAL TARIFFS TO PROTECT THE COMMERCE, TO PROTECT OUR U.S. CARRIERS, THEY ARE SET, AND THEY ARE SET BETWEEN NEGOTIATIONS.

WHAT HAPPENED WHEN PHILIPPINE AIRLINES GOT CAUGHT IN THE '70'S IS THEY REVISED THEIR SYSTEM. THEY TOOK THE BELIEF THAT A TRAVEL AGENT OR GSA GENERAL SALES AGENT MIGHT NOT BE REBATING ILLEGALLY BECAUSE IT TALKS OF TICKET AGENT, AND THAT'S

MORE OF A CARRIER PERSON. AND SINCE IT WAS VAGUE, THEY SET UP PEOPLE LIKE MR. DIAZ BASICALLY AS BAGMEN.

THE COURT: I'M SORRY, WHAT YOU'RE SAYING THEN IS THAT IN THE '70'S THERE WERE RULES ABOUT HOW LOW A TICKET COULD BE PRICED INTERNATIONALLY. PHILIPPINE AIRLINES WAS DISOBEYING THOSE RULES BY DISCOUNTING THEIR TICKETS TOO LOW, AND THEN TRIED TO GET AROUND THAT REGULATION BY ALLOWING AGENTS TO PRICE THEIR TICKETS TOO LOW AND GIVING -- BY GIVING REBATES? IS THAT WHAT YOU'RE SAYING?

MR. ANOLIK: NO, YOUR HONOR, NOT THE PRICING. THE PRICING IS SET BY NEGOTIATIONS. WHAT IT IS IS A REBATE. A PHILIPPINE NATIONAL RETURNING TO THE PHILIPPINES, IF THE FARE IS $980, IS NEVER GOING TO PAY $980. AND THAT'S WHY ON THE TICKETS THEMSELVES IN THE FARE CATEGORY IT ALWAYS SAYS 980, YET THE TICKETS WE HAVE IN THIS CASE ARE SOLD FOR 640, 580, 620. YET PHILIPPINE AIRLINES DEMANDS THAT THE 980 Is PUT THERE. WHY DID THEY DO THAT? BECAUSE THEY REALIZED THAT ON A DAILY BASIS THEY ARE TODAY VIOLATING -- DOING A CRIMINAL ACT WITH EACH TICKET THAT IT GIVES TO ITS NATIONALS TO COME HOME AT LESS THAN THE TARIFF THAT'S NEGOTIATEO BETWEEN THE U.S. GOVERNMENT. THE COURT: ISN'T THAT WHAT I JUST SAID?

MR. ANOLIK: I THOUGHT YOU MEANT IN PRICING.

THE COURT: I'M UNDERSTANDING WHAT I THOUGHT I WAS REPEATING, I THOUGHT THAT'S WHAT YOU SAID, AND THAT'S WHAT I SAID, AND YOU SAID, NO, I WAS WRONG. AND YOU'RE SAYING IT AGAIN, AND IT STILL SOUNDS LIKE THAT'S THE SAME THING. SO EITHER I MUST NOT

BE UNDERSTANDING IT, OR MAYBE I AM AND -

MR. ANOLIK: PERHAPS YOU ARE AND I CANNOT UNDERSTAND I CANNOT UNDERSTAND THE COURT.

THE COURT: LET'S TRY AGAIN. YOU'RE SAYING THAT THERE'S A NEGOTIATED RATE WHICH MUST NOT BE --

MR. ANOLIK: SOLD BELOW

THE COURT: -- SOLD BELOW BETWEEN -- FOR INTERNATIONAL TICKETS, AND THAT PHILIPPINE AIRLINES HAS AT SOME POINT IN THE PAST SOLD ITS TICKETS FOR LOWER THAN IT WAS SUPPOSED TO, AND THEN THE WAY IT DID THAT THEN, I GUESS, WAS TO -

MR. ANOLIK: AND NOW.

THE COURT: -- PUT THE FACE AMOUNT ON THE TICKET AS CERTAIN THING, BUT THEN REBATING SOME AMOUNT TO SOMEONE.

MR. ANOLIK: YES, BUT TO USE A BAGMAN, IF I CAN USE THE --

THE COURT: I WISH YOU WOULDN'T BECAUSE IT'S TOO COLLOQUIAL. I DON'T UNDERSTAND WHAT YOU MEAN BY "BAGMAN." I NEED TO HEAR IT IN LEGAL TERMS.

MR. ANOLIK: BY USING SOMEONE OTHER THAN ITSELF TO GIVE THE REBATE, TO ACHIEVE WHAT THEY WANT TO GET BELOW THE TARIFF, THEY USE A SECOND MIDDLEMAN BEFORE THE MIDDLEMAN, BEFORE THE AGENT, BEFORE IT GETS TO THE CONSUMER.

THEREFORE, EACH TICKET IS ACTUALLY CONTRABAND, AND WHAT WE'RE DEALING WITH HERE IS CONTRABAND BECAUSE THEY ARE ILLEGALLY WRITTEN TICKETS. AND THE ONLY WAY THEY CAN ACHIEVE THESE WITHOUT GETTING GOVERNMENT REGULATION, GOVERNMENT REGULATORS IN THE U.S. ATTORNEY'S OFFICE AGAINST THEM AGAIN, LIKE

THEY DID IN OUR '76 CASE, WAS TO TRY TO GET PEOPLE LIKE MR. DIAZ'S COMPANY TO ACT AS THIS LAYER OF INSULATION THAT THEY THINK GETS THEIR PURPOSE ACROSS AND THIS IS WHAT THEY'RE DOING.

SO WE'RE DEALING HERE WITH A SERIES OF DAILY ILLEGAL ACTS DEALING WITH CONTRABAND WHICH GOES INTO OUR RICO. THEY ARE DOING IT WITH WHOM THEY WANT. THEY GET TO PICK THEIR MIDDLE PERSON, NOT THEIR AGENT, BECAUSE BEFORE IT GETS TO THE TRAVEL AGENT YOU USE THESE GENERAL SALES AGENTS. AND THEY'RE PICKING THESE PEOPLE, CONTROLLING THEM, DICTATING WHAT THEY WANT TO AVOID, A U.S. LAW THAT IS A SERIOUS LAW BECAUSE IT AFFECTS OUR COMMERCE OF OUR CARRIERS, OUR U.S. CARRIERS.

AND WHEN WE LOOK AT THE ALLEGATIONS THAT I HAVE, I CAN SHOW WHERE THE CRIMINALITY OF THE RICO, THE UNFAIR COMPETITIVE PRACTICES ALL COME FROM THIS ILLEGAL ACTIVITY. AND TO -- TO ASSUME THAT PHILIPPINE AIRLINES IS NOT AWARE OF IT -- AND I DIDN'T WANT TO TAKE THE CHANCE. I WENT LOOKING AT 6 O'CLOCK THIS MORNING. I WAS ABLE TO GET A BOX OF THE OLD BOOKS, BUT I WAS FINALLY ABLE TO CONFIRM WITH THE DEPARTMENT OF TRANSPORTATION, WHICH I COULDN'T DO SINCE WE STARTED PLEADING.

I KNEW IT WAS STILL AGAINST THE LAW, THE OLD 403(B), WHICH WAS THE LAW WE COULDN'T FIND. THERE HAD BEEN A RECENT CHANGE. MR. PALIK HAS LOOKED AT IT AND MY OFFICE HAS LOOKED FOR IT, AND UNTIL I HAD CONVERSATIONS WITH STAFF AT THE DOT THIS MORNING, I DIDN'T GET THE STATUTE THAT I PRINTED OUT FOR YOU NOW. I APOLOGIZE THAT IT'S NOT IN A FILED FORM. YES, IT IS A CODE, SO IT

DOESN'T NEED JUDICIAL NOTICE, BUT I GAVE IT TO COUNSEL, AND.I THINK IT'S THE BASIS TO SHOW THAT PHILIPPINE AIRLINES HAS NO ABILITY TO COME IN WITH THE ULTIMATE OF UNCLEAN HANDS AND DO WHAT IT'S DOING.

AND WE'LL GO OVER EACH OF THE PLEADINGS, BUT IF YOU HAVE ANY QUESTIONS ABOUT THIS ILLEGALITY I CAN SAY, HAVING TESTIFIED ON THE ISSUE BEFORE IN VARIOUS FEDERAL COURTS AND STATE COURTS, THAT THEY CAN'T DO WHAT THEY'RE DOING. I'M HERE AS COUNSEL, BUT I WAS -- IN THE -- IN THE CONSENT DECREE I WAS THE ATTORNEY FOR TWO OF THE OTHER CARRIERS.

I'M REPRESENTING TO THE COURT THAT, ALTHOUGH I DON'T HAVE THE 20-YEAR-OLD FILE, I AM REPRESENTING THAT THE APPENDIX TO THE BOOK IS THAT WHICH WAS SIGNED BY JAMES BROWNING, COINCIDENTLY, WHEN HE WAS TRYING THE PATTY HEARST CASE BEFORE HE BECAME A JUDGE, AND IT WAS SOMETHING THAT WE WORKED OUT.

THE COURT: WELL, I DON'T DISPUTE ANYTHING OF WHAT YOU SAY. I DON'T KNOW ANYTHING ABOUT IT. BUT WHAT I WOULD SAY IS THAT IT SEEMS TO BEAR NO RELATIONSHIP WHATSOEVER TO EITHER OF THESE COMPLAINTS, NOR HAVE ANY BEARING ON WHETHER THEY SHOULD OR SHOULD NOT BE DISMISSED WITH OR WITHOUT PREJUDICE, OR WHETHER SANCTIONS SHOULD OR SHOULD NOT BE IMPOSED FOR THEM.

MR. ANOLIK: IT DOES WITH --

THE COURT: YOU'RE TALKING ABOUT A DIFFERENT CASE, A DIFFERENT CLAIM, A DIFFERENT ILLEGALITY, A DIFFERENT CAUSE OF ACTION. AND IF THERE WERE SUCH A ONE, PERHAPS A COMPLAINT COULD BE FILED RAISING THOSE CLAIMS. BUT IT CERTAINLY HAS NOTHING

TO DO WITH THE CLAIM THAT'S BEFORE US AT THIS MOMENT.

MR. ANOLIK: THE RICO, IT CERTAINLY DOES. UNDER SECTION 1951 –

THE COURT: IT'S NOT SAYING –

MR. ANOLIK: -- 1951 --

THE COURT: IT MIGHT BE A RICO CLAIM, BUT IT'S NOT THIS RICO CLAIM, IT'S NOT THE ONE RAISED IN THIS COMPLAINT. IT'S A TOTALLY DIFFERENT THING.

MR. ANOLIK: EXCUSE ME. WE SAID THEY WERE DOING AN ILLEGAL ACT AND THERE WERE CONTINUED ILLEGAL ACTS. WHAT I'M TRYING TO –

THE COURT: A DIFFERENT ONE. NOW YOU'RE TALKING ABOUT A DIFFERENT ILLEGAL ACT WHICH NO MENTION HAD BEEN MADE OF. YES, THERE WOULD BE SIMILARITY IN THAT THE PARTIES PERHAPS WOULD BE THE SAME, THE NAME OF THE CAUSE OF ACTION MIGHT BE THE SAME, BUT IT'S NOT THE SAME SUBSTANCE AS THIS COMPLAINT. THIS COMPLAINT IS --

MR. ANOLIK: I BELIEVE IN NOTICE PLEADING IF THE ELEMENTS ARE PLED, ONE, TO CONSTRUE IT IN THE LIGHT MOST FAVORABLE TO US, ACCEPT ALL WELL-PLEADED FACTUAL ALLEGATIONS AND CAN WE PROVE THEM.

I'M SHOWING THAT WE CAN PROVE BECAUSE THE COMPLAINT FORTUNATELY THEN, IF THAT IS THE COURT'S POSITION, SAYS THEY DID ILLEGAL ACTS. AND I'M SHOWING THE COURT TODAY AN ILLEGAL ACT. I'M SHOWING THE COURT THE ACTUAL STATUTE. AND SINCE IT HAS BEFORE IT THESE PLEADINGS, AND IF YOU DO ILLEGAL ACTS AND YOU KNOCK OUT A COMPETITOR, WHICH WE ARE THEN TO PHILIPPINE AIRLINES, THAT'S AN UNFAIR COMPETITIVE PRACTICE.

THE COURT: THIS COMPLAINT DOES

NOT COME ANYWHERE CLOSE TO GIVING ANY SORT OF NOTICE THAT ANYTHING SUCH AS WHAT YOU SAY MIGHT HAVE BEEN CONTEMPLATED. AND THEREFORE, THE FACT THAT SUCH ACTS COULD PERHAPS BE PROVEN HAS NO RELATIONSHIP TO THE SUFFICIENCY OF THIS COMPLAINT.

HAD THIS BEEN THE FIRST TIME, I WOULD HAVE GIVEN LEAVE TO AMEND TO SWITCH TO AN UTTERLY NEW AND DIFFERENT FACTUAL AND LEGAL THEORY. BUT SINCE THIS IS THE SECOND TIME, I'M QUITE DISINCLINED TO DISMISS THIS TIME WITH LEAVE TO AMEND.

IF YOU HAVE AN ENTIRELY NEW AND DIFFERENT THEORY SUCH AS YOU'RE NOW POINTING OUT, AND THE STATUTE OF LIMITATIONS HASN'T RUN ON IT, YOU'RE CERTAINLY WELCOME TO FILE ANOTHER COMPLAINT BASED ON THAT THEORY. BUT THIS COMPLAINT BEARS NO RELATIONSHIP THAT I CAN SEE TO SUCH A CONTEMPLATED FUTURE COMPLAINT.

MR. ANOLIK: IN THAT THE COMPLAINT, ITSELF WAS RESPONDED TO BY MR. PALIK, MAY I -- AND I READ HIS OPPOSITION TO THE DISMISSAL, WOULD THE COURT WANT TO HEAR ANYTHING FURTHER FROM HIM AS TO THE OTHER ALLEGATIONS? WE -- BUT IF WE HAVE SOMEBODY DEALING ILLEGALLY EVERY DAY IN AN UNFAIR. COMPETITIVE PRACTICE, WHICH WE'VE PLED AGAINST US THAT THEY'RE DOING THIS, I DON'T SEE, IF THE COURT CAN TAKE RECOGNITION THAT THIS IS A CRIME, THAT THE COURT CANNOT ALLOW THE PLEADING AS SUBMITTED TO PROCEED.

THE COURT: I WILL NOT FOR THE REASONS I'VE JUST STATED, ON THOSE GROUNDS. NOW, WITH RESPECT TO THE GROUNDS THAT WERE ACTUALLY PLED AND DISCUSSED IN THE MOVING PAPERS, I AM WILLING TO ENTERTAIN ARGUMENT

ON THOSE POINTS PARTICULARLY SINCE, AS I SAY, I AM CONSIDERING SANCTIONS ON THEM. SO ANYTHING THAT EITHER OF YOU WOULD LIKE TO SAY WITH RESPECT TO THE TWO COMPLAINTS THAT WERE FILED AND THE MOTIONS TO DISMISS THAT WERE FILED, ON THE THEORIES UPON WHICH THEY WERE FILED AND BRIEFED, YOU MAY DO SO.IF YOU WOULD PREFER TO SUBMIT IT ON THE PAPERS, THAT WOULD BE ACCEPTABLE AS WELL. I HAVE READ THE PAPERS.

MR. ANOLIK: IF I MIGHT HAVE MR. PALIK RESPOND TO YOUR SPECIFIC QUESTIONS, YOUR HONOR.

THE COURT: OKAY.

MR. PALIK: YOUR HONOR, AS YOU KNOW, THE RICO COMPLAINT WAS BASED ON AN ALLEGATION OF EXTORTION, AND WHETHER THAT'S UNDER THE FEDERAL OR STATE DEFINITION, THEY'RE PRETTY MUCH THE SAME. THE EXTORTION IN THIS CASE WAS A THREAT OF FORCE OR FEAR. IN THIS CASE THE THREAT OF FORCE OR FEAR HAD TO DO WITH THE SUSPENSION OF MR. LEO'S (PHONETIC) ABILITY TO PURCHASE THESE TICKETS AT COMPETITIVE PRICES. SEXTANT TRAVEL SERVICE OBJECTED AND THEY WERE TERMINATED.

THE EXTORTION HAS TO DO WITH COERCING SEXTANT TRAVEL SERVICE TO COMPLY WITH AN ILLEGAL REGIME AND THE REBATES WHICH ARE -- WHICH ARE REFUNDED ILLEGALLY ARE A PART OF PHILIPPINE AIRLINES' ATTEMPT TO FUND THIS ILLEGAL ACTIVITY. OTHERWISE THEY WOULDN'T BE ABLE TO GIVE THE GSA'S AND THE OTHER -- THE DISTRIBUTORS AN INCENTIVE ESSENTIALLY TO COMPLY.

WHEN SEXTANT TRAVEL SERVICE REFUSED TO COMPLY THEY WERE THREATENED WITH SUSPENSION BECAUSE PHILIPPINE AIRLINES

REPRESENTED 80 PERCENT OF SEXTANT TRAVEL SERVICE'S BUSINESS.

THAT WAS A VERY, VERY EFFECTIVE THREAT. IT'S THAT THREAT OF SUSPENSION, AND THE SUSPENSION IS ILLEGAL AND IN FURTHERANCE OF A PATTERN OF ILLEGAL ACTIVITY WHICH WE CAN PROVE THAT WE HAVE ALLEGED IN OUR COMPLAINT FOR RICO. SO THAT'S OUR ARGUMENT WITH REGARD TO RICO.

WITH REGARD TO UNFAIR -

THE COURT: THE PROBLEM WITH THAT IS WHAT YOU NEED FOR RICO IS A THREAT TO HAVE SOMEBODY GIVE YOU THE MONEY. THE MONEY YOU'RE SAYING THEY GAVE YOU IS THE $100,000 THAT THEY TOOK FROM THE LETTER OF CREDIT. SO THE THREAT AND THE TAKING OF THE LETTER OF CREDIT ARE UNRELATED.

THEY THREATENED TO AND, IN FACT, DID TERMINATE YOURSTATUS AS A GSA, AND SUBSEQUENTLY THEY TOOK WITHOUT ANY ACTION ON YOUR PART THE MONEY FROM THE LETTER OF CREDIT. SO THAT THE THREAT IS UNRELATED TO THE TAKING OF THE MONEY. THE TAKING OF THE MONEY MAY OR MAY NOT HAVE BEEN LAWFUL, BUT IT CERTAINLY WAS NOT ACCOMPLISHED UNDER THREAT.

MR. PALIK: WE DO HAVE CASE LAW AUTHORITY THAT WAS CITED IN OUR OPPOSITION TO THE MOTION TO DISMISS THAT THE TWO DON'T HAVE TO BE RELATED.

IN OTHER WORDS, THE MONEY THAT'S SEIZED DOESN'T HAVE TO BE THE OBJECT OF THE THREAT.

THE COURT: PERHAPS NOT, BUT THE THREAT HAS TO BE RELATED TO THE TAKING OF THE MONEY.

MR. PALIK: IT CERTAINLY IS BECAUSE THE MONEY WAS SECURITY.

THE COURT: IN A CAUSE AND EFFECT WAY. THE MONEY HAS TO BE TAKEN AS A RESULT OF THE THREAT.

MR. PALIK: WE WOULD ARGUE THAT IT WAS.

THE COURT: WELL, IT CLEARLY WASN'T, SO YOU HAD BETTER MOVE ON TO SOMETHING ELSE. THE THREAT IS, "IF YOU DO NOT GIVE ME MONEY, I WILL DO SOMETHING TO YOU." HERE WHAT HAPPENED IS, "I'VE DONE SOMETHING TO YOU ALREADY. NOW I'M GOING TO TAKE YOUR MONEY."

MR. PALIK: YOUR HONOR, THE NET FARES -

THE COURT: IT'S NOT A THREAT. IT'S NOT EXTORTION.

MR. PALIK: THE $100,000 WAS THE RESULT OF A DISPUTE AS TO WHETHER OR. NOT PHILIPPINE AIRLINES OR SEXTANT TRAVEL SERVICE --

THE COURT: RIGHT, I KNOW THAT.

MR. PALIK: IF YOU WOULDN'T MIND, YOUR HONOR, JUST ONE MOMENT.

SEXTANT TRAVEL SERVICE CONTINUED TO WRITE TICKETS AT THE, QUOTE, UNQUOTE, NET FARE, WHICH IS THIS DISCOUNTED FARE DURING SEPTEMBER BY WRITING THESE TICKETS THROUGH THE ARC CLEARINGHOUSE.

THE $100,000 WAS SEIZED AS A CONSEQUENCE OF THAT ACTIVITY, OR AT LEAST ALLEGEDLY AS A CONSEQUENCE OF THAT ACTIVITY.

WE WOULD ARGUE THAT MR. DIAZ, OR SEXTANT TRAVEL SERVICE, HAD TO WRITE THE TICKETS AT THAT FARE BECAUSE WHERE THE AIRLINE WAS VIOLATING THE TARIFF REGULATION BY SELLING THE TICKETS AT A DISCOUNTED FARE TO THE OTHER DISTRIBUTORS, AND WAS NOT

GIVING SEXTANT TRAVEL SERVICE THAT PRIVILEGE, IT WAS VIOLATING THE VERY SPIRIT OF THE TARIFF ACT AND, CONSEQUENTLY, SEXTANT TRAVEL SERVICE WAS NOT IN A POSITION TO COMPETE EFFECTIVELY, WHICH IS WHAT THE TARIFF IS DESIGNED TO DO, IS TO PRESERVE THE TRAVEL AGENT'S ABILITY TO COMPETE AGAINST POSSIBLE PREDATORY PRICING, AND THAT THE $100,000 WAS SEIZED AS A CONSEQUENCE OF THAT ACTIVITY.

WE SEE A CAUSAL RELATIONSHIP, AND THAT'S ALL WE'LL SAY AT THAT POINT.

THE COURT: OKAY.

MR. PALIK: THANK YOU VERY MUCH FOR LISTENING TO ME ON THAT, YOUR HONOR.

THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE ABOUT ANY OF THE OTHER CAUSES OF ACTION OR ANYTHING ELSE YOU WOULD LIKE TO SAY ABOUT ANYTHING IN THIS CASE?

MR. PALIK: YES, YOUR HONOR, WE DO. WE WOULD LIKE TO ADDRESS THE OTHER CAUSES OF ACTION. IT WILL BE MUCH BRIEFER BECAUSE WE ALREADY COVERED A LOT OF THESE POINTS ALREADY.

THE COURT: OKAY.

MR. PALIK: WITH REGARD TO THE INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE, OR THE UNFAIR COMPETITION CLAIM, WE WOULD CLAIM THAT THE BASIS OF THE ILLEGAL ACTIVITY IS THE VERY SAME ILLEGAL ACTIVITY THAT WE HAVE ALLEGED FOR THE RICO CLAIM. SO WE CAN ---

THE COURT: NOT THE ONE YOU ALLEGED; THE ONE YOU'RE NOW RAISING ABOUT REBATES.

MR. PALIK: WELL, WE ALLEGED IN THE COMPLAINT THAT THERE WAS A THREAT OF FORCE OR FEAR TO TAKE $100,000 THAT WAS THE

RESULT OF OUR CLIENT'S UNWILLINGNESS TO COMPLY.

THE COURT: OKAY.

MR. PALIK: SO THAT'S THE ISSUE THERE. AND WITH REGARD TO THE INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS, I WISH WE HAD THESE AFFIDAVITS EARLIER FOR YOUR HONOR, BUT THERE IS REALLY A VERY SERIOUS FEAR OF REPRISAL AMONG THE OTHER GSA'S.

WE HAVE EVIDENCE THAT WE COULD PRODUCE LATER -- AND I DON'T WANT TO TAKE TOO MUCH TIME WITH THIS -- THAT WOULD SHOW THAT THERE ARE OTHER GSA'S WHO ARE UNDER PRESSURE NOT TO DEAL WITH OUR CLIENT BECAUSE THEY -- PHILIPPINE AIRLINES SEEKS COMPLIANCE WITH THIS ILLEGAL REGIME.

SO IT TOOK US UNTIL ABOUT TWO DAYS AGO TO FINALLY FIND TWO AGENTS WHO WOULD EVEN BE WILLING TO SAY THAT THESE CONTRACTS EXIST.

THE COURT: WELL, IT'S NOT -- IT'S NOT -- THIS IS NOT A TIME FOR EVIDENCE. IT'S A TIME FOR PLEADING.

MR. PALIK: WE AGREE.

THE COURT: WHAT NEEDED TO BE DONE WAS A PLEADING OF.A VALID CONTRACT IN THE COMPLAINT. AND I'M NOT SUGGESTING THAT YOU SHOULD HAVE HAD MORE AFFIDAVITS OR HAD THEM EARLIER. YOU SHOULDN'T HAVE HAD ANY AT ALL. WHAT YOU SHOULD HAVE HAD WAS A PLEADING IN THE COMPLAINT OF THE TERMS -- WELL, GENERALLY IT'S A WRITTEN CONTRACT AND IT'S ATTACHED TO THE COMPLAINT, BUT A PLEADING OF A VALID ORAL CONTRACT WHICH THEY KNEW ABOUT AND INTERFERED WITH. SO THAT'S WHAT WAS MISSING, AND IT'S STILL MISSING, AND THE AFFIDAVITS AREN'T EITHER NECESSARY OR SUFFICIENT TO MAKE UP FOR THAT

DEFICIENCY.

MR. PALIK: OUR RESPONSE TO THAT, YOUR HONOR, IS THAT WE SHOULD NOT -- AS YOU SAID, WE SHOULD NOT HAVE TO PROVE OUR CASE AT THE PLEADING STAGE.

THE COURT: NO, YOU JUST HAVE TO PLEAD IT.

MR. PALIK: I UNDERSTAND, YOUR HONOR, BUT BECAUSE THESE ORAL CONTRACTS DO DEPEND ON THE TESTIMONY OF WITNESSES WHO WOULD --

THE COURT: NO, THEY CAN DEPEND ON THE PLEADING OF YOUR CLIENT SAYING, "I HAD THIS CONTRACT. HERE'S WHAT IT WAS.HERE'S WHAT IT SAID. THEY KNEW ABOUT IT. THEY INTERFERED WITH IT IN THUS AND SUCH A WAY."

THAT'S WHAT YOU DO IN A PLEADING. YOU DON'T NEED WITNESSES IN A PLEADING.

MR. PALIK: WELL, YOUR HONOR, WE'RE UNDER THREAT OF SANCTIONS, AND WE'RE UNWILLING TO PUT ANYTHING TOO SPECIFIC IN THERE IN CASE WE FIND OUT LATER OUR WITNESSES ARE UNWILLING TO TESTIFY.

WE'RE DOING OUR BEST UNDER THE CIRCUMSTANCES, AND WE BELIEVE THAT WE'VE PLED THE ELEMENTS, THAT WE HAVE STATED THATTHERE ARE THESE CONTRACTS AND THAT THEY HAVE BEEN INTERFEREDWITH, AND WE JUST NEED THE OPPORTUNITY TO PROVE THIS IN OUR DISCOVERY, AND POSSIBLY IN A MOTION FOR SUMMARY JUDGMENT OR AT TRIAL.

[THE COURT?]: SO THAT COVERS THE INTENTIONAL INTERFERENCE WITH CONTRACT, I THINK.

FINALLY -- I THINK THOSE ARE ALL THREE CAUSES OF ACTION. AS YOU KNOW, THE OTHER TWO CAUSES ARE REALLY REMEDIES, SO THEY DEPEND ON THE FIRST THREE. I THINK THAT'S IT. IS

THERE ANYTHING ELSE?

MR. ANOLIK: NO.

THE COURT: MR. ANOLIK, IF SANCTIONS ARE IMPOSED IT'S NOT CLEAR TO ME WHO THEY SHOULD BE IMPOSED UPON. THAT'S ONE REASON I ASKED YOU ABOUT THE MASTHEAD.

MR. ANOLIK: THE BUCK STOPS HERE, YOUR HONOR.

THE COURT: THE PLEADING I BELIEVE WAS FILED BY YOURSELF, BUT THE PLEADINGS WERE NOT SIGNED BY YOU, AND THEY WEREN'T SIGNED -- I GUESS THEY WERE SIGNED UNDER YOUR MASTHEAD, BUT NOT BY SOMEONE WHO WAS ON YOUR MASTHEAD. SO --

MR. ANOLIK: I UNDERSTAND THAT --

THE COURT: I THINK THE SANCTIONS WOULD RELATE PROBABLY TO THE FILING OF THE FIRST AMENDED COMPLAINT.

MR. ANOLIK: I UNDERSTAND THE COURT. IT'S JUST THAT, OBVIOUSLY, IT IS -- IT'S SUCH A SERIOUS MATTER FOR I BELIEVE MYSELF WITH MY REPUTATION, I WOULD ASK THE COURT TO LOOK AT THE TOTALITY. THERE IS SOMETHING BAD GOING ON.

IF IT WASN'T EXACTLY RIGHT, YES, IT SHOULD HAVE BEEN AMENDED, BUT TO LOOK AT WHERE WE CAN GO FROM HERE AND HOPEFULLY STOP THIS ILLEGAL ACTIVITY, WE'RE THE ONES THAT ARE GOING TO DO IT, AND NOT THE GOVERNMENT. AND TO TAKE US OUT OF COURT NOW IS I THINK HARSH ON ALL OF THE CONSUMERS.

THE COURT: OKAY. DID YOU WANT TO RESPOND TO ANYTHING?

MR. MC LEOD: YOUR HONOR, I DON'T WANT TO BELABOR ANYTHING.

THE COURT: THE ONLY CONCERN I HAVE, IT SEEMS INTUITIVELY INCORRECT, BUT

SINCE I JUST GOT THEM THIS MORNING, I CAN'T QUITE PUT MY FINGER ON WHY. BUT THE NOTION THAT THE CONTRACT THAT WAS INTERFERED WITH WAS AN ORAL REQUIREMENTS CONTRACT TO SUPPLY ALL THE TICKETS THAT SOMEONE WANTED CERTAINLY COULDN'T BE A CONTRACT THAT SAID YOU CAN -- YOU MUST SUPPLY THEM AT RATES WE LIKE OR AT COMPETITIVE RATES. THAT COULDN'T POSSIBLY BE ENFORCEABLE; AND THUS, COULDN'T BE A CONTRACT.

BUT THERE IS SUCH A THING AS A REQUIREMENTS CONTRACT. PERHAPS AN ORAL ONE WOULDN'T VIOLATE THE STATUTE OF FRAUDS, I DON'T KNOW, AND CERTAINLY IT'S NOT ALLEGED THAT THE AIRLINE KNEW OF THESE CONTRACTS. SO THERE'S THAT PROBLEM.

BUT I WONDER IF YOU HAVE ANY THOUGHTS ON JUST THE NOTION THAT THERE COULD BE SUCH A THING AS AN ORAL REQUIREMENTS CONTRACT TO SUPPLY AS MANY TICKETS AS SOMEONE WANTED AT A PRICE THAT SOMEONE LIKED, AND WHETHER THE SORT OF MANUFACTURER'S DECISION NOT TO GIVE THAT WHOLESALER THAT WOULD BE INTERFERENCE OF CONTRACT.

I MEAN IT WOULD SORT OF BE LIKE SAYING MACY'S HAS AGREED TO SELL WIDGETS FOR A REALLY LOW PRICE TO ALL ITS CUSTOMERS, AND THE WIDGET MANUFACTURER DOESN'T GIVE MACY'S THOSE WIDGETS AT THAT PRICE, CAN THE CUSTOMER THEN SUE MACY'S? HAS THE MANUFACTURER INTERFERED WITH MACY'S CONTRACT WITH ITS CUSTOMERS BY CHOOSING NOT TO PROVIDE WIDGETS AT THAT PRICE?

I MEAN INTUITIVELY IT DOESN'T SEEM RIGHT, BUT I CAN'T QUITE PUT MY FINGER ON THE LEGAL REASON WHY IT ISN'T.

MR. ANOLIK. MAY I ADDRESS, COUNSEL, PART OF THAT QUESTION TO SHOW

WHERE MACY'S ISN'T REALLY THESE MIDDLE -- I'M NOT GOING TO CALL THEM BAGMEN AGAIN, BUT HERE'S THE DIFFERENCE: WHEN YOU HAVE AN ORAL REQUIREMENT CONTRACT NOT EVERYBODY GETS THE CONTRACTS -- THE TICKETS FROM MR. DIAZ AT THE SAME PRICE.

IF YOU ARE NOW THE SUBAGENT OR THE SUB-SUBAGENT, YOU MUST KEEP CERTAIN LEVELS TO GET THEM. SO IT'S NOT JUST A MATTER OF I WANT ALL OF EVERYTHING. I COME TO YOU AND SAY I WANT THE TICKETS, I WANTED ONLY 2 PERCENT OVER WHAT PHILIPPINE AIRLINES IS CHARGING.

THERE IS THAT NEGOTIATION ON EACH ONE HERE EACH PERSON ISN'T THE SAME, IS GOING OVER TO MACY'S, AND THEREFORE, IT'S A DIFFERENT ENTITY.

THE COURT: MAYBE THEY'RE NOT THE SAME, BUT IT DOESN'T MATTER. COULD THE MACY'S CUSTOMER SUE MACY'S ON ITS CONTRACT? CAN THESE PEOPLE SUE YOU FOR NOT GIVING THEM THE TICKETS AT THE PRICES THEY WISHED THEY GOT THEM FOR?

MR. ANOLIK: I'LL TELL YOU -- I'LL GIVE YOU THE CASE AS TO HOW IT WORKS IN THE INDUSTRY.

I DON'T WANT TO DEAL WITH CERTAIN PEOPLE. JUST LIKE MR. PALIK SAID, PHILIPPINE AIRLINES IS NOW PUTTING PRESSURE ON CERTAIN PEOPLE NOT TO DEAL WITH CERTAIN PEOPLE. BUT IF I'M BUYING TICKETS FROM MR. DIAZ, I GET 2 PERCENT, 2 PERCENT, BUT IF I SELL SO MANY TICKETS THEN I GET 1 PERCENT ADDITIONAL AND 1 PERCENT ADDITIONAL.

FOR HIM TO CUT THEM OFF, THEY DO HAVE A CAUSE OF ACTION. "YOU DIDN'T LET ME GET MY OVERRIDE."

IT'S JUST LIKE THE DEALER OF THE CAR WHO

GETS HIS MONEY AT THE END OF THE YEAR, NOT THE $100 OVER STICKER PRICE. "YOU DIDN'T LET ME FINISH THE YEAR." THEY HAVE A CAUSE OF ACTION.

MR. MC LEOD: YOUR HONOR, I THINK WE -- WE HAVE NOW HAD TWO TIMES, TWO OPPORTUNITIES FOR SIG TYR SIG OR SEXTANT TO DEVELOP THIS THEORY ABOUT INTERFERENCE WITH CONTRACTUAL RELATIONS. THIS IS THE BEST THAT THEY HAVE GOT.

I REMIND THE COURT ABOUT MR. DIAZ'S OWN DECLARATION WHERE THE MOST HE COULD SAY WAS, "WELL, I CAN'T -- I'M UNABLE TO GUARANTEE THE PEOPLE WHO USED TO BUY THINGS, TICKETS FROM ME, TICKETS AT THOSE SORTS OF PRICES."

THERE IS NO CAUSE OF ACTION I DON'T THINK BECAUSE --AND THESE DECLARATIONS, THEY ARE ESSENTIALLY THE SAME. THE FATALITY IN THEM IS EVIDENT. I DON'T BELIEVE THAT THEY STAND FOR VALID ORAL CONTRACTS.

WHILE TECHNICALLY AND CONCEPTUALLY THERE IS SUCH A THING AS A VALID ORAL REQUIREMENTS CONTRACT, THIS ISN'T THAT CASE.

RECALL OUR FIRST MOTION TO DISMISS -- THE ORIGINAL MOTION TO DISMISS THAT WE BROUGHT WHERE WE SAID, LOOK, THE GSA'S DO NOT BUY THE TICKETS. THEY DON'T BUY THE TICKETS. IT'S REALLY THE CONSUMER THAT'S BUYING THE TICKET.

SO HOW CAN THIS DOWNSTREAM RETAIL TICKET AGENT WHO CLAIMS -- BOTH OF THEM CLAIM THAT THEY ARE EMPLOYED BY CONTRACT AS AN AGENT, AND THEN ALL THEY SAY IS, WELL, BECAUSE THEY HAVE TERMINATED SEXTANT'S ABILITY -- SEXTANT'S STATUS AS A GSA, THAT -- AND THAT'S BEEN TERMINATED SO THAT SEXTANT CAN'T SELL TICKETS AT THE NET FARE, "I HAVE

BEEN UNABLE TO PURCHASE ANY TICKETS FROM THE PLAINTIFFS AT A COMPETITIVE PRICES." THAT'S WHAT ONE OF THEM SAID.

WHAT THEY'RE GROUSING ABOUT IS SIMPLY THAT THEY ARE NOT GETTING THEM AT THE PRICE THAT THEY WOULD LIKE TO GET THEM, THE OLD PRICE, BUT THEY'RE GETTING THEM. AND IT'S SO -- IT'S SO BARREN, THIS ORAL REQUIREMENTS CONTRACT. WHAT IS A-- "I HAD AN ORAL REQUIREMENTS CONTRACT TO SUPPLY MY BUSINESS WITH ALL ITS REQUIREMENTS FOR PHILIPPINE AIRLINES TICKETS AT THE MOST COMPETITIVE PRICES."

THAT IS INSUFFICIENT FOR A PLEADING OF A VALID ORAL CONTRACT.

THE COURT: THAT REMINDS ME THOUGH, THE OTHER CONCERN I HAVE WITH RESPECT TO SANCTIONS IS THE BRINGING OF THIS LAWSUIT IN WHAT APPEARS TO ME TO BE A VIOLATION OF THE BANKRUPTCY COURT'S RULING NOT TO BRING ANY LAWSUIT ATTEMPTING TO ENFORCE THE GSA CONTRACT, AND IT SEEMS TO ME THAT THAT REALLY IS WHAT THIS WAS FROM THE BEGINNING, AS I POINTED OUT IN THE DENIAL OF THE TRO, BUT THEN IT CONTINUED THROUGH THE COMPLAINT, THE FIRST AMENDED COMPLAINT.

SO JUST TO GIVE YOU NOTICE OF THAT AND AN OPPORTUNITY TO RESPOND, THAT WOULD BE THE OTHER RULE 11 KIND OF PROBLEM THAT I HAVE WITH THIS AMENDED COMPLAINT.

MR. ANOLIK: THE ONE --

THE COURT: AND IF YOU WANT TO REPLY TO ANY OF HIS POINTS, YOU CAN.

MR. MC LEOD: YOUR HONOR -

THE COURT: AND I GUESS I SHOULD SAY, TOO, THAT WHILE PALS PURPORTED TO JOIN IN THIS MOTION, THEY HAVE SAID NOTHING

ABOUT THE FACTS AS RELATE TO PALS. THE -- ONE OF THE CAUSES OF ACTION THAT WAS MOVED TO BE DISMISSED ON -- I FORGET WHICH ONE NOW, I GUESS THE CALIFORNIA UNFAIR PRACTICES ONE -- IS DISMISSIBLE BECAUSE OF THE FACT THAT THE AIRLINE IS IN A VERTICAL RELATIONSHIP WITH THE PLAINTIFF. THE OTHER TRAVEL AGENCY IS IN A HORIZONTAL, NOT A VERTICAL RELATIONSHIP WITH THE PLAINTIFF. SO THE MOTION DOES NOT PROTECT OR COVER THAT AGENCY.

NOW, THEY MAY HAVE THEIR OWN SEPARATE AND COGNIZABLE MOTION TO DISMISS, BUT THEY HAVEN'T MADE IT YET. SO THE CLAIM WOULD NOT BE DISMISSED AS AGAINST THEM, AND WE WILL NEED TO HAVE A CASE MANAGEMENT CONFERENCE, AND SO ON, TO GO FORWARD WITH THE CASE ON THAT ONE CAUSE OF ACTION AGAINST THE OTHER CODEFENDANT.

MR. MC LEOD: DOES THE COURT NEED ME TO ADDRESS THE 17043 AND THE 17045 SALES BELOW COST AND SECRET REBATE PAYMENT CLAIMS UNDER THE UNFAIR PRACTICES ACT?

THE COURT: WHERE WERE THOSE RAISED?

MR. MC LEOD: THEY WERE RAISED IN THEIR OPPOSITION, YOUR HONOR.

THE COURT: IN THE OPPOSITION TO THE MOTION TO DISMISS?

MR. MC LEOD: YES.

THE COURT: THEY'RE NOT IN THE COMPLAINT?

MR. MC LEOD: THEY ARE NOT IN THE COMPLAINT. WELL, NO, EXCUSE ME THEY ARE IN THE COMPLAINT.

THE COURT: WHERE ARE THEY?

MR. MC LEOD: IF THE COURT WILL TURN TO -

THE COURT: IN THE FIRST AMENDED

COMPLAINT?

MR. MC LEOD: YES, THE FIRST AMENDED COMPLAINT, PAGE 9, YOUR HONOR. THIS IS THAT PARAGRAPH 24A, B, C, D, E, F, AND PARAGRAPH 24A HAS BEEN WITHDRAWN. AND THEN THE ONLY SUBSTANTIVE CLAIMS REMAINING ARE B AND C -

THE COURT: OH, RIGHT. OKAY.

MR. MC LEOD: -- WHICH HAS TO DO WITH THE BELOW COST AND --

THE COURT: SELLING PHILIPPINE AIRLINE TICKETS AT LESS THAN COST.

MR. MC LEOD: AND THE REBATES, YOUR HONOR. THE COURT: AND SECRET REBATES.

MR. ANOLIK: WE APPARENTLY HAVE -

MR. MCLEOD: AND WE CITED -- WOULD THE COURT LIKE ME TO DEVELOP A LITTLE BIT MORE THAN WHAT'S IN OUR PAPERS ON THAT OR -

THE COURT: OKAY.

MR. MC LEOD: WELL, THEIR BROAD AND GENERAL UNFAIR PRACTICES ACT HAS NOW BEEN REDUCED TO TWO, YOUR HONOR: THE 17043 SALES BELOW COST CLAIM AND 17045 SECRET REBATE PAYMENTS.

I WOULD ASK THE COURT TO REVIEW THE DIAZ MOTION TO DISMISS IN THE OTHER CASE THAT WE'LL BE TALKING ABOUT A LITTLE BIT LATER AT PAGES 6 AND 9, BECAUSE THERE MR. DIAZ TALKS ABOUT THAT HE KNEW ABOUT THESE.COMMISSIONS AND SO FORTH.

SO IN ORDER FOR A VALID CLAIM UNDER 17 - - EXCUSE ME, AVALID CLAIM UNDER 17045, SECRET UNEARNED REBATES, TO BE VALID, IT HAS TO BE SECRET AND IT HAS TO BE UNEARNED. NEITHER OF THOSE HAVE BEEN PLEADED, BUT WORSE, MR. DIAZ HAS ADMITTED TO RECEIVING COMMISSIONS SO HE KNEW ABOUT THOSE.

ALSO HIS DECLARATION IN SUPPORT OF HIS - - OF THE DIAZ MOTION TO DISMISS AT PARAGRAPH

12 TALKS ABOUT THE COMMISSIONS THAT SEXTANT NORMALLY RECEIVES. SO I WANTED TO JUST RAISE THAT FOR THE COURT. PLOTKIN SEEMS TO BE THE MOST PERSUASIVE AUTHORITY ON THE UPA, AND IT TALKS ABOUT HOW THE UPA REALLY DOES ADDRESS THE HORIZONTAL COMPETITION LEVEL, AND PHILIPPINE AIRLINES ISN'T IN THAT HORIZONTAL LEVEL BETWEEN THE GSA'S.

NOW, THEY'RE CLAIMING THAT THERE'S A CONSPIRACY BETWEEN THE GSA'S, AND WE SORT OF COLLUDED OR HAVE HELPED THEM. THE PROBLEM IS THEY REALLY HAVEN'T CITED THAT WITH RESPECT TO THE SECRET REBATE PAYMENTS. I MEAN THEY DON'T HAVE A VALID SUBSTANTIVE CLAIM ON THAT.

NUMBER TWO, SALES BELOW COST, WE CAN SELL OUR TICKETS, WE CAN SET THE PRICES, WE'RE IN A VERTICAL RELATIONSHIP BETWEEN PHILIPPINE AIRLINES AND WITH THE GSA'S THAT WE HAVE, AND WE CAN SELL THEM AS LONG AS THEY MEET WHATEVER TARIFF REGULATIONS, AND SO FORTH.

BUT THAT IS NOT EVEN A VERY WELL DEVELOPED CLAIM OF THEIRS. THEY JUST SAY, WELL, TICKETS ARE BEING SOLD BELOW COST.

THE COURT: WELL, IT WOULD HAVE TO BE THAT PALS WAS DOING THAT --

MR. MC LEOD: CORRECT.

THE COURT: -- AND THAT YOU WERE THE AGENT OF PALS AND PALS'S ANTICOMPETITIVE HORIZONTAL CONDUCT.

MR. MC LEOD: YES.

THE COURT: AND SINCE IT'S YOU THAT SELLS THE TICKETS, IT COULDN'T BE PALS THAT'S SELLING THE TICKETS. THEREFORE, IT'S GOT TO BE THE PERSON WHO'S VERTICAL TO THEM THAT IS DOING THAT.

MR. MC LEOD: RIGHT. AND IT LOOKS LIKE WHAT THEY -- WHAT SEXTANT HAS SIMPLY DONE IS REALLY JUST COPIED THE SUBSTANTIVE WORDS OF THE UPA STATUTES AT ISSUE HERE, THE 17043 AND 17045, AND THERE REALLY ISN'T ANY SUBSTANCE AND DETAIL PARTICULARITY ABOUT WHAT FACTS THAT THEY THINK THEY CAN ALLEGE IS THE DELICT OF SOME SORT.

MR. ANOLIK: YOUR HONOR --

THE COURT: EXCUSE ME, I JUST WANT TO MAKE SURE HE'S FINISHED BEFORE I TURN BACK TO YOU.

MR. ANOLIK: CERTAINLY.

THE COURT: DID YOU WANT TO SAY ANYTHING ELSE?

MR. MC LEOD: JUST TO PUT A LAST POINT ON THEIR --THEIR LATE SUBMITTED DECLARATIONS HERE ABOUT ORAL REQUIREMENTS CONTRACTS, YOUR HONOR, THERE -- THEY HAVE HAD SIX MONTHS TO TRY TO UNDERSTAND WHAT THEIR RELATIONSHIP IS WITH THEIR RETAILERS AND THIS IS THE BEST THAT THEY CAN COME UP WITH.

AND I WOULD JUST FURTHER ARGUE THAT MR. DIAZ'S STATEMENT ABOUT HIS CONTRACTUAL RELATIONSHIP, WHATEVER IT IS, WITH HIS DOWNSTREAM RETAILERS WOULD PROBABLY BE THE BEST ALLEGATION EVIDENCE THAT HE COULD COME UP WITH AT THIS PLEADING STAGE AND HE FAILED TO DO THAT IN HIS DECLARATION.

THE COURT: NOW, ON BEHALF OF PALS, DO YOU DISAGREE THAT YOU HAVE NOT FILED ANY MOTION TO DISMISS THAT'S AIMED SPECIFICALLY AT YOUR POSITION?

MR. FERNANDO: WELL --

THE COURT: I DON'T KNOW IF YOU'VE ANSWERED, OR IF YOU'RE PLANNING ON FILING A MOTION TO DISMISS, OR IF YOU JUST WANT TO

WAIT FOR SUMMARY JUDGMENT, OR WHAT YOU'RE THINKING OF.

MR. FERNANDO: YOUR HONOR, AS PART OF THE UNFAIR PRACTICES ACT, WHICH IS THE ONLY VIABLE CLAIM AGAINST PALS, THE ONLY THING THAT THEY HAVE ALLEGED IS THAT MY CLIENT, PALS IS CONSPIRING WITH PHILIPPINE AIRLINES IN ORDER TO COMPLETE WITH THEM, UNFAIR PRACTICE ACT AGAINST SEXTANT TRAVEL. SO THAT IF PHILIPPINE AIRLINES IS NOT --

THE COURT: NO, THEY'RE SAYING THAT PHILIPPINE AIRLINES IS AIDING AND ABETTING YOU IN COMMITTING ANTICOMPETITIVE ACTS AGAINST THEM.

MR. FERNANDO: THAT'S CORRECT, YOUR HONOR.

THE COURT: AND YOU HAVE NOT ADDRESSED THAT CLAIM IN ANY MOTION, AND PHILIPPINE AIRLINES DID NOT SINCE IT WASN'T THEIR CLIENT.

SO IF YOU HAVE A CLAIM, A MOTION TO DISMISS LIKE THAT, YOU WOULD HAVE TO FILE IT, IF IT'S NOT TOO LATE.

MR. FERNANDO: YES, YOUR HONOR.

MR. MC LEOD: ON THAT SCORE, YOUR HONOR, IF I COULD JUST ADD SOMETHING TO WHAT MR. FERNANDO WANTED TO SAY, THE REAL BASIS FOR -- ONE OF THE BASES FOR THE UPA CLAIMS IS THIS LETTER THAT SEXTANT IS TRYING TO USE AS SOME ALLEGATION -- AS SOME EVIDENCE OF THIS CONSPIRACY TO ELIMINATE SEXTANT AS A COMPETITOR, AND THIS IS THE LETTER THAT THE -

THE COURT: I KNOW THE LETTER.

MR. MC LEOD: AND THAT WAS SUBMITTED AS AN EXHIBIT.

THE COURT: RIGHT, I SAW IT.

MR. MC LEOD: AND ON ITS FACE IT DOES

NOT PROVIDE THE BASIS FOR THAT. THAT'S ALL.

MR. ANOLIK: YOUR HONOR?

THE COURT: YES.

MR. ANOLIK: MR. MC LEOD'S A VERY HONORABLE MAN, I'VE KNOWN HIM OVER THE YEARS AND I KNOW HE WOULD NOT HAVE MEANT TO MISSTATE ANYTHING FOR THE COURT, BUT WHEN HE QUOTED THE FIRST SENTENCE ON VERTICAL RESTRAINTS WHAT WASN'T PUT IN WAS THE NEXT SENTENCE.

THE COURT: NEXT SENTENCE OF WHAT?

MR. ANOLIK: THAT'S APPLICABLE HERE.

THE COURT: THE FIRST SENTENCE OF WHAT?

MR. ANOLIK: HE HAD QUOTED MY BOOK. HE HAD QUOTED ME SAYING THAT VERTICAL RESTRAINTS AREN'T ALLOWED IN CERTAIN AREAS, BUT -

THE COURT: WELL, I DIDN'T CREDIT THAT BECAUSE I FOLLOW THE LAW, NOT BOOKS PEOPLE WRITE.

MR. ANOLIK: ALL RIGHT.

THE COURT: SO --

MR. ANOLIK: BUT WHERE IT IS IMPORTANT GOES TO OUR CASE HERE IN THE GOOD FAITH.

MY NEXT SENTENCE IS:

"ONCE TITLE AND DOMINION ARE TRANSFERRED TO A BUYER, THE SELLER CANNOT LEGALLY CONTINUE TO EXERCISE CONTROL OVER THE PRICE AT WHICH THE GOOD MAY BE RESOLD. ATTEMPTING TO DO SO IS PRICE FIXING." WHAT HE KEPT ARGUING TO YOU NOW IS THAT IT WAS THE CONSUMER WHO IS THE BUYER. IT ISN'T. MR. DIAZ BUYS THE TICKETS FROM PHILIPPINE AIRLINES.

HE THEN HAS THAT INVENTORY, AND HE

THEN SELLS IT. SO IS WHERE THE PRICE FIXING IS I STILL THINK VALID, BUT HAS BEEN ELIMINATED.

WHEN THEY SAID, "YOU WILL CHARGE $20 OVER WHAT YOUR NET, NET, NET WAS," THEY COULDN'T DO THAT. THE COURT QUESTIONED WHETHER OR NOT THERE WAS ANY VIOLATION OF THE BANKRUPTCY ORDER.

THERE IS NO CLAIM THAT WE HAVE FOR BREACH OF CONTRACT IN ANY WAY. IT'S WHAT THE BANKRUPTCY COURT I BELIEVE HAD STATED THERE SHOULD NOT BE. THAT IS NOT IN WHAT WE HAVE.

THE COURT: IT DIDN'T SAY YOU CAN'T SUE FOR BREACH OF CONTRACT. IT SAYS YOU CAN'T SUE IN ANY WAY TO TRY TO ENFORCE THE OBLIGATIONS UNDER THE GSA. AND IT SEEMS TO ME THAT QUITE -- AMONG THE RELIEF THAT YOU WERE SEEKING WAS WHAT WOULD ESSENTIALLY BE ENFORCING THE POSITION THAT YOU HAD UNDER THE GSA; THAT IS, ENFORCING YOUR ABILITY TO GET THE TICKETS AT THE RATE THAT YOU WANTED, AND SO ON~ AND THAT'S WHAT SEEMED TO ME TO BE VIOLATIVE OF WHAT THE BANKRUPTCY COURT HAD ALLOWED.

MR. ANOLIK: I APPRECIATE THAT. THEIR QUESTION CAME UP AS TO THE STATEMENT THAT MR. DIAZ HAD MADE WITH PAL.

IT IS OUR POSITION THAT HE WAS COERCED TO GO ALONG WITH THE REBATE OR HE WOULDN'T HAVE BEEN PART OF THE PROGRAM. IN THE THIRD CAUSE OF ACTION FOR THE VIOLATION OF THE UNFAIR PRACTICES ACT, APPARENTLY C DOES TALK ABOUT THE REBATES THAT I BROUGHT UP TODAY.

SO THE QUESTION AS TO WHETHER THEY HAVE APPEARED APPARENTLY IS C IN THE THIRD CAUSE OF ACTION, THE SECRET PAYMENTS OF ALLOWANCE OF REBATES.

AND AGAIN, THE REBATES GOING TO THE CONSUMERS DIRECTLY FROM THE CARRIER WOULD HAVE BEEN ILLEGAL.

IF YOU AND I WERE TO GO TO PHILIPPINE AIRLINES TODAY ON SUTTER STREET AND TRY TO BUY A TICKET, OUR TICKET IS GOING TO BE $980. IF WE ARE PHILIPPINE NATIONALS AND WE GO TO THE RIGHT PEOPLE, WE'RE GOING TO GET THAT FOR ABOUT 620.

AND WITH PHILIPPINES' KNOWLEDGE OF IT, I THINK YOU HAVE JUST SUCH A CONTINUED ACTION FLAUNTING OUR LAWS THAT IT NEEDS OUR CAUSES OF ACTION TO TRY TO SETTLE THIS, YOUR HONOR.

MR. MC LEOD: YOUR HONOR, IF I COULD JUST –

THE COURT: NO, I WOULD LIKE TO FINISH WITH EVERYTHING THEY HAVE TO SAY IN REPLY, OR MAYBE THEY ARE ALREADY FINISHED BUT –

MR. ANOLIK: IF MR. PALIK COULD TALK ABOUT THE BANKRUPTCY, SINCE I WAS NOT THERE, YOUR HONOR.

THE COURT: OKAY.

MR. PALIK: YES, YOUR HONOR. THANK YOU. WE APPRECIATE THIS OPPORTUNITY.

I WAS INSTRUMENTAL IN GETTING MODIFICATION OF THE BANKRUPTCY INJUNCTION AND I ALSO DRAFTED THIS ORDER, AND WE MAINTAIN VERY ADAMANTLY THAT WE ARE NOT SEEKING ENFORCEMENT OF ANY PREPETITION OR PRECONFIRMATION DUTIES THAT MAY HAVE BEEN OWED OUR CLIENT PRIOR TO THE FILING OF THE ANCILLARY PROCEEDING IN THE BANKRUPTCY CASE, PHILIPPINE AIRLINES BANKRUPTCY CASE. WE ARE –

THE COURT: IT'S THE OTHER CLAUSE THAT I'M REFERRING TO, THE ONE THAT SAYS YOU

SHALL NOT TRY TO ENFORCE -- I DON'T HAVE IT RIGHT IN FRONT OF ME, BUT THE OTHER PRONG OF IT, WHICH WAS THAT YOU SHALL NOT TRY TO ENFORCE ANY OBLIGATIONS THAT YOU SAY WERE DUE TO YOU UNDER THE GSA CONTRACTS.

MR. PALIK: FOR THE RECORD AND FOR CLARIFICATION, WOULD YOU MIND IF I QUOTED THE ORDER?

THE COURT: NO.

MR. PALIK: OKAY. THANK YOU.

"THE MOVANT IS PERMITTED TO FILE ANY ACTIONS IT MAY HAVE AGAINST THE DEBTOR IN THIS CASE, PHILIPPINES AIRLINES, INC." --

THE COURT: YOU NEED TO READ IT SLOWLY ENOUGH SO THE COURT REPORTER HAS A SHOT AT GETTING IT DOWN.

MR. PALIK: EXCUSE ME, I'M SORRY ABOUT THAT.

MR. ANOLIK: I WAS ALSO A FORMER COURT REPORTER.

MR. PALIK: ALL RIGHT.

"THE MOVANT IS PERMITTED TO FILE ANY ACTIONS IT MAY HAVE AGAINST THE DEBTOR IN THIS CASE, PHILIPPINE AIRLINES, INC., SUBJECT TO THE FOLLOWING RESTRICTIONS:

"A, NO ACTION SHALL BE BROUGHT FOR THE ENFORCEMENT OF ANY CLAIMS OR OTHER DUTIES, WHETHER ARISING FROM CONTRACT OR TORT, WHERE SAID CAUSE OF ACTION ACCRUED PRIOR TO THE EFFECTIVE DATE OF THE DEBTOR'S PLAN OF REORGANIZATION APPROVED BY THE PHILIPPINES SECURITIES & EXCHANGE COMMISSION ON JUNE 7TH, 1999; AND/OR, TWO, FOR THE ENFORCEMENT OF THE MOVANT'S GSA AGREEMENT WITH PHILIPPINE AIRLINES UNLESS OTHERWISE PERMITTED BY THIS COURT."

FIRST -- WE HAVE TWO -- TWO ARGUMENTS IN THIS REGARD.

THE FIRST IS THERE REALLY IS NO CLAIM OR CAUSE OF ACTION FOR BREACH OF CONTRACT.

NOW, I UNDERSTAND THE COURT IS CONCERNED THAT THIS IS SOMEHOW AN END RUN AROUND THE ORDER, AND WE WOULD MAINTAIN THAT THE TORT WHICH ACCRUED, THE CAUSE OF ACTION WHICH ACCRUED, ACCRUED WHEN MR. DIAZ'S GSA PRIVILEGES WERE TERMINATED.

THE COURT: I'M NOT TALKING ABOUT THAT PART. I'M TALKING ABOUT THE SECOND CLAUSE, "SEEKING ENFORCEMENT OF THE GSA CONTRACT."

I DON'T CARE IF YOU CALL IT "BREACH OF CONTRACT," BUT IF YOU SEEK AS A REMEDY GETTING THE BENEFITS OF THAT CONTRACT, THEN I BELIEVE YOU'VE VIOLATED THE BANKRUPTCY JUDGE'S ORDER.

AND IT SEEMED TO ME YOU DID, IN FACT, SEEK AS A REMEDY THE BENEFITS THAT YOU WERE DUE UNDER THIS CONTRACT.

MR. PALIK: I'M GLAD YOUR HONOR CLARIFIED THAT POINT BECAUSE I THINK WE WERE TALKING PAST EACH OTHER.

WE REALLY AREN'T SEEKING GSA BENEFITS. WE ARE SAYING THAT, BECAUSE THE TARIFF ACT IS VIOLATED THROUGH THE ILLEGAL REBATES, WE ARE PUT IN A DISADVANTAGED POSITION NFAIRLY. I MEAN THIS IS UNFAIR COMPETITION.

WE ARE IN A POSITION WHERE WE CANNOT COMPETE, EVEN THOUGH THE COMPETITIVE ADVANTAGE GIVEN TO THE OTHER GSA'S IS DUE TO AN ILLEGAL ACT. THAT IS OUR -- WE'RE SEEKING INJUNCTIVE RELIEF TO PREVENT THAT ACTIVITY, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

MR. ANOLIK: THANK YOU, YOUR HONOR.

THE COURT: I THINK WE HAVE GONE

BACK AND FORTH AT LEAST TWICE, SO IF YOU HAVE SOME CRUCIAL THING THAT YOU FEEL YOU HAVEN'T SAID AND ISN'T BRIEFED, AND THAT YOU JUST HAVE TO SAY, YOU CAN, BUT I WOULD LIKE TO MOVE ALONG AT SOME POINT HERE.

MR. ANOLIK: I HAVE NOTHING FURTHER, YOUR HONOR.

MR. MC LEOD: ALL RIGHT, YOUR HONOR.

THE COURT: ALL RIGHT. SO THAT'S THE MOTION TO DISMISS IN THE SIG TYR SIG CASE, AND THAT MOTION TO DISMISS WILL BE GRANTED WITH PREJUDICE ON ALL CAUSES OF ACTION EXCEPT THE THIRD CAUSE OF ACTION AGAINST PALS, WHICH WILL NOT BE DISMISSED AND WILL HAVE TO BE DEALT WITH, AND WE'LL HAVE TO SET A CASE MANAGEMENT CONFERENCE TO DEAL WITH THAT IF YOU STILL WISH TO PURSUE THAT CAUSE OF ACTION.

MR. ANOLIK: YES, YOUR HONOR. IT IS OUR POSITION THAT THE SAME OWNER OF THE AGENCY IS THE OWNER OF THE AIRLINES.

THE COURT: MAYBE SO, BUT -- AND IS IT TOO LATE FOR THEM TO FILE A MOTION TO DISMISS?

MR. ANOLIK: THEY HAVE ALREADY ANSWERED. I DON'T KNOW THE TIME, YOUR HONOR.

THE COURT: THERE'S SOME KIND OF MOTION TO DISMISS YOU CAN FILE AFTER YOUR ANSWER.

MR. FERNANDO: YES, YOUR HONOR.

THE COURT: I DON'T KNOW.

MR. ANOLIK: I DON'T KNOW EITHER, BUT I'M QUITE SURE IF THERE IS, COUNSEL WILL FIND IT. BUT IN THE MEANTIME, WE'RE PREPARED -

THE COURT: I GUESS -- MY POINT IS I NEED TO HAVE A DATE FOR SOMETHING, SO I

GUESS WHAT I'LL HAVE TO DO IS SET A DATE FOR A CASE MANAGEMENT CONFERENCE ON THAT CASE, AND WE'LL SET IT FOR AT LEAST SIX WEEKS FROM TODAY SUCH, IF THERE IS A MOTION TO DISMISS THAT CAN BE MADE, H CAN BE NOTICED FOR THAT DATE.

SO SIX WEEKS FROM TODAY WOULD BE –

MR. MC LEOD: YOUR HONOR, ON MY CALENDAR AT THE OFFICE THERE WAS A CASE MANAGEMENT CONFERENCE SCHEDULED FOR NEXT FRIDAY, MAY 4.

THE COURT: OH, REALLY?

MR. MC LEOD: YOU MAY WANT TO RECALENDAR THAT.

THE COURT: I WILL HAVE TO BECAUSE I WOULD LIKE IT TO BE FURTHER ENOUGH IN THE FUTURE SO THAT A MOTION TO DISMISS COULD BE MADE.

AND ALSO I'M NOT HERE ON MAY 4TH, SO IF THERE WAS ONE SCHEDULED FOR THEN, IT WAS SCHEDULED IN ERROR.

MR. PALIK: ALSO, YOUR HONOR, FOR CLARIFICATION WHEN YOU SAY THIRD CAUSE OF ACTION –

THE COURT: I THOUGHT IT WAS THE THIRD, THE CALIFORNIA UNFAIR PRACTICES CAUSE OF ACTION WAS ALLEGED AGAINST BOTH DEFENDANTS. IT'S DISMISSED AGAINSTTHE AIRLINES, BUT IT'S NOT DISMISSED AGAINST PALS –

MR. PALIK: THANK YOU.

THE COURT: – AT THIS POINT AT LEAST.

MR. FERNANDO: EXCUSE ME, YOUR HONOR. EVEN IF IT S THE ONLY ALLEGATION THAT PALS, THE WAY IT DID THAT WAS TO – ACTING –

THE COURT: I DON'T WANT TO TALK ABOUT IT ANYMORE. IF YOU HAVE A MOTION AND IT'S NOT TOO LATE TO MAKE IT, GO AHEAD AND

MAKE IT. AND IF IT IS TOO LATE TO MAKE IT, THEN YOU'LL JUST HAVE TO PROCEED TO SUMMARY JUDGMENT AT WHATEVER YOUR NEXT CHANCE IS.

BUT SIX WEEKS FROM TODAY WOULD BE --

MR. ANOLIK: JUNE 1ST.

THE COURT: JUNE 1ST, OKAY. WE'LL HAVE A CASE MANAGEMENT CONFERENCE AT 1:30 ON JUNE 1ST. AM I AVAILABLE, SHE I LAH?

THE CLERK: YEAH.

THE COURT: AND IF YOU HAVE A VALID MOTION TO DISMISS, YOU CAN NOTICE IT FOR THAT DATE. AND OTHERWISE, OR IN EITHER EVENT, WE WILL HAVE A CASE MANAGEMENT CONFERENCE ON THAT DATE, AND I WOULD LIKE CASE MANAGEMENT CONFERENCE STATEMENTS FILED BEFORE THAT DATE JOINT IF POSSIBLE, SEPARATE IF NECESSARY. ALL RIGHT. SO WE'LL MOVE ON THEN TO THE CASE WHERE THE PHILIPPINE AIRLINES IS THE PLAINTIFF AGAINST DIAZ, AND IN THAT CASE WE HAVE TWO MOTIONS:

ONE IS A MOTION TO DISMISS, THE OTHER IS A MOTION FOR ATTACHMENT. MY INCLINATION IS TO DENY THE MOTION TO DISMISS. THE MOTION CONTAINS A GREAT DEAL OF EXTRANEOUS FACTUAL MATTER, BUT DOES NOT REALLY MAKE OUT A CLAIM THAT THESE -- THAT THE COMPLAINT ITSELF IS INSUFFICIENT, IT SEEMS NOT TO BE SUFFICIENT.

IT SEEMS TO BE SUFFICIENT, AND THE ARGUMENTS THAT THERE SHOULD NOT -- THAT THERE SHOULD BE A STAY OR INJUNCTION AGAINST THE LAWSUIT AND SO ON I AM NOT PERSUADED BY IN LIGHT OF AT LEAST THE NINTH CIRCUIT BANKRUPTCY LAW.

WITH RESPECT TO THE ATTACHMENT, I'M DISINCLINED TO GRANT THAT ATTACHMENT. MY CONCERN IS THAT THE -- AT LEAST AT THIS POINT THE GUARANTEE SEEMS TO BE A GUARANTEE OF

OBLIGATIONS DUE AS A GSA CONTRACTOR.

I DON'T KNOW WHETHER THESE OBLIGATIONS WERE INCURRED AS A GSA CONTRACTOR OR WERE PERHAPS OBLIGATIONS THAT WERE INCURRED LATER ONCE THE GSA CONTRACT HAD EXPIRED. AN ARGUMENT COULD BE MADE THEN THAT THE GUARANTEE DIDN'T APPLY TO THOSE, AND IF THAT WERE THE CASE, THEN I WOULD HAVE A HARD TIME FINDING THE PROBABLE VALIDITY OF THE CLAIM AT THIS TIME. SO FOR THAT REASON I'M DISINCLINED TO GRANT THE ATTACHMENT, AS WELL AS DISINCLINED TO GRANT THE MOTION TO DISMISS.

AND WHAT I WOULD DO WOULD BE TO SET A CASE MANAGEMENT CONFERENCE ON THAT CASE AS WELL, WHICH WE COULD DO AS WELL ON THE 1ST OF JUNE AT 1:30.

MR. ANOLIK: THANK YOU.

THE COURT: SO IF ANYONE FEELS A STRONG NEED TO ADDRESS ANY OF THOSE MATTERS BRIEFLY, THEY MAY DO SO.

MR. ANOLIK: NO, THANK YOU, YOUR HONOR.

MR. MC LEOD: WE WOULD LIKE TO, IF I COULD TAKE A STAB, YOUR HONOR, AT THE ATTACHMENT MOTION.

THE COURT: BRIEFLY, YOU MAY.

MR. MC LEOD: IT'S PRETTY CLEAR THAT AND WE CAN'T GIVE YOU A STRAIGHT – WELL, A DEFINITIVE ANSWER AS TO HOW MUCH OF THESE $232,000 WERE FOR AMOUNTS THAT MAY HAVE BEEN WHILE THE SEXTANT RELATIONSHIP WAS GOING ON OR AFTER THE TERMINATION DATE BECAUSE THEY CONTINUED TO DO BOTH, IF THE COURT UNDERSTANDS THAT.

THE COURT: YES.

MR. MC LEOD: AND WHAT WE WOULD ASK THE COURT TO RECONSIDER IS THAT THE

ATTACHMENT LAW IN CALIFORNIA DOES ALLOW FOR AN ATTACHMENT AGAINST AN INDIVIDUAL'S ASSETS ARISING OUT OF HIS OR HER BUSINESS OR PROFESSION.

THE COURT: OH, I DON'T DISPUTE THAT.

MR. MC LEOD: SO - AND THIS WAS A -- THESE ARE NOT ASSETS OF SEXTANT.

THE COURT: NO, I AGREE.

MR. MC LEOD: THESE ARE ASSETS OF MR. DIAZ IN HIS PERSONAL CAPACITY.

THE COURT: NO, I KNOW, I KNOW.

MR. MC LEOD: THEN WHAT IS PREVENTING AN ATTACHMENT THAT -

THE COURT: BUT THE OBLIGATION WOULD HAVE TO ARISE OUT OF THE CONTRACT THAT THE GUARANTEE WAS GUARANTEEING. AND IF THE OBLIGATION DID NOT ARISE OUT OF THAT CONTRACT, THEN THE GUARANTEE ARGUABLY MIGHT NOT APPLY.

I'M NOT RULING ON THIS ON THE MERITS, BUT AT THE PLEADING STAGE I CAN'T RULE OUT THAT POSSIBILITY; AND THUS, I CAN'T BASE A WRIT OF ATTACHMENT ON IT.

MR. MC LEOD: LET ME THEN SAY THIS: THE FORMAL CONTRACTUAL RELATIONSHIP TERMINATED IN I THINK IT WAS APRIL OR MARCH OF 1999. AFTERWARDS THERE WAS A COURSE OF DEALING. IT WAS IN THE BUSINESS RELATIONSHIP.

THE COURT: YEAH.

MR. MC LEOD: THIS 1997 PERSONAL GUARANTEE DOES NOT HAVE ANY LIMITATIONS ON IT WHATSOEVER.

THE COURT: WELL, IT TALKS ABOUT THE GSA AGREEMENT, [WHICH COULD BE CONSTRUED TO MEAN THAT IT GUARANTEES OBLIGATIONS ARISING OUT OF THAT CONTRACT.

I'M NOT SAYING THAT IS WHAT IT MEANS,

BUT IT COULD BE WHAT IT MEANS. AND AT THE PLEADING STAGE I CAN'T RULE OUT THAT THAT'S WHAT IT MEANS; AND THUS, I'M NOT INCLINED TO GRANT A WRIT, WHICH I CONSIDER SOMEWHAT EXTRAORDINARY ON THAT BASIS.

MR. MC LEOD: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: OKAY. SO –

MR. ANOLIK: I HAVE A FEW COMMENTS, BUT I WON'T TAKE UP ANY MORE TIME IF THAT'S THE COURT'S POSITION. THANK YOU, YOUR HONOR.

THE COURT: SO WE'LL SEE YOU ON BOTH CASES ON THE 1ST OF JUNE WITH CASE MANAGEMENT STATEMENTS BEFORE THEN. IS THAT ALL RIGHT, SHEILAH?

THE CLERK: YEAH.

THE COURT: I DIDN'T HAVE A CASE MANAGEMENT CONFERENCE ON THE PAL CASE BECAUSE THEY WERE RELATED SO THERE WASN'T ONE SET.

THE CLERK: YEAH.

MR. ANOLIK: YOUR HONOR, NOT FOR THE COURT, BUT MAY I LEAVE THE BOOK FOR THE LIBRARY OF THE FEDERAL BUILDING?

THE COURT: YOU CAN SEND IT TO THE LIBRARIAN AS A DONATION TO THE LIBRARY.

MR. MC LEOD: THE COURT SHOULD ASK FOR THE CURRENT VOLUME.

THE COURT: I WOULD ASK FOR ALL EDITIONS IF IT HAD HISTORICAL VALUE.

MR. ANOLIK: THANK YOU, YOUR HONOR.

(THE PROCEEDINGS WERE CONCLUDED AT 11:44 A.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED 1N THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION. THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE. FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE. IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 3RD DAY OF MAY, 2001.

S/CAROL A. KAREN, CSR, RPR, RDR, CRR

[This document has been prepared in accordance with Supreme Court Rule 33]

FILED
JUN -5 2001
Richard Wieking, Clerk
U.S. District Court
Northern District of CA
Oakland

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, INC., and SEXTANT TRAVEL SERVICES
Plaintiffs,
v.
PHILIPPINE AIRLINES, INCORPORATED, and PACIFIC AIR LEISURE SERVICES,
Defendants.

No. C-00-03683-CW

ORDER GRANTING PHILIPPINE AIRLINES, INC.'S MOTION TO DISMISS

Defendant Philippine Airlines (PAL) moves under Rule 12 (b) (6) of the Federal Rules of Civil Procedure to dismiss Plaintiffs' complaint. Plaintiffs oppose the motion. The matter was heard on April 27, 2001. Having considered all of the papers filed by the parties and oral argument on the motion, the Court GRANTS the motion without leave to amend.

BACKGROUND

Plaintiffs' first amended complaint (FAC) against Defendants PAL and travel agency Pacific Air Leisure Services (PALS) seeks injunctive and declaratory relief and alleges anti-trust violations and unfair business competition claims under both State and federal law. Plaintiff Sig Tyr Sig (STS) is a California corporation and owner of Plaintiff Sextant Travel Services, (Sextant), a travel agency.

In 1996, Sextant and PAL entered into a "general service agreement" (GSA), which entitled Sextant to volume commissions on the sale of airline tickets in exchange for offering those tickets at greatly discounted rates. Sextant was under contract with PAL until 1999 when the GSA expired. The parties continued to do business together until August, 2000. PAL alleges that at that time it discovered that Sextant was "blocking" seats -- reserving seats on flights before actually selling them -- thereby preventing their sale to other customers, PAL asserts it terminated its relationship with Sextant on September 30, 2000 because of the Seat blocking.

Defendant PALS is also a GSA. Plaintiffs claim they have been and continue to be unfairly barred from competing for the ethnic Philippine travel market by PAL's termination of Sextant's GSA status and that PAL is involved in a conspiracy with PALS to monopolize the ethnic Philippine travel market.

PAL filed for bankruptcy in 1998. Because of this, Plaintiffs had to seek special permission from the bankruptcy court to file this complaint. The bankruptcy court granted Plaintiffs permission, with the restriction that:

No actions shall be brought

i. for the enforcement of any claims or other duties, whether arising from contract or tort, where said cause of action accrued prior to the effective date of the Debtor's plan of reorganization approved by the Philippine Securities and Exchange Commission ("P5EV'), June 7, 3.999, and/or

ii. for the enforcement of the Movant's GSA agreement with Philippine Airlines, unless otherwise permitted by this court.

In re Philippine Airlines, 98-32705 TC, Order Modifying Injunction I in Ancillary Proceeding, filed October 5, 2000. Plaintiffs are further limited to seeking only injunctive or declaratory relief and to filing only in the United States District Court for the Northern District of

California.

Plaintiffs filed their original complaint on October 4, 2000, and sought a temporary restraining order (TRO). This Court denied Plaintiffs' motion for a TRO on October 19, 2000, finding that issuance of the TRO Plaintiffs sought would have violated the bankruptcy court's order and that Plaintiffs had failed to satisfy the requirements for injunctive relief. On February 2, 2001, this Court dismissed Plaintiffs' original complaint, with leave to amend, upon a motion by Defendant PAL under Rule 12 (b)(6). Order Granting Philippine Airlines, Inc. 's Motion to Dismiss, C 00-3683 CW (February 2, 2001) (Dismissal Order).

PAL now seeks dismissal, without leave to amend, of Plaintiffs' first amended complaint under Fed. R. Civ. Proc. 12(b)(6) for failure to state a claim. PAL seeks to dismiss all of Plaintiffs' claims: (1) under Section 3 of the Sherman Anti-Trust Act, 15 U.S.C. §1; (2) under the Cartwright Act, California Business and Professions Code, § 16700, et seq.; (3) under California's Unfair Practices Act, Bus. & Prof. Code §17000, et seq.; (4) under the Racketeer Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, et seq.; (5) for intentional interference with contractual relations; (6) for intentional interference with prospective economic relations; (7) for injunctive relief; and (8) for declaratory relief. In their opposition to this motion, Plaintiffs state they will no longer pursue their first and second causes of action for violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1, and the Cartwright Act, California Business and Professions Code, § 16700, et seq., respectively.

DISCUSSION

A. Legal Standard Under Rule 12 (b)(6)

A motion to dismiss for failure to state a claim will be denied unless it appears that the plaintiff can prove no set of facts which would entitle it to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Fidelity Fin. Corp. v. Federal Home Loan Bank of San Francisco, 792 F.2d 1432,

1435 (9th Cir. 1986), cert. denied 479 U.S. 1064 (1987). All material allegations in the complaint will be taken as true and construed in the light most favorable to the plaintiff. See NL Indus. Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

Dismissal of a complaint can be based on either the lack of a cognizable legal theory or the lack of sufficient facts alleged under a cognizable legal theory. See Balestreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990).

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Proc. 8(a). "Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required." Fed. R. Civ. Proc. 8(e). These rules "do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds on which it rests." Conley, 355 U.S. at 47. However, "conclusory allegations without more are insufficient to defeat a motion to dismiss." McGlinchy v. Shell Chemical Co., 845 F.2d 801, 810 (9th Cir. 1988); See also Smilecare Delta Dental Plan, 88 F.3d 780, 785 n.6 (9th Cir.), cert. denied, 519 U.S. 1028, (1996); Rutman Wine Co. v. E & J Gallo Winery,829 F.2d 729, 735-36 (9th Cir. 1987).

When granting a motion to dismiss, a court is generally required to grant a plaintiff leave to amend, even if no request to amend the pleading was made, unless amendment would be futile. See Cook, Perkiss and Liehe, Inc. v. Northern Cal. Collection Serv., Inc., 911 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment would be futile, a court examines whether the complaint could be amended to cure the defect requiring dismissal "without contradicting any of the allegations of [the] original complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990). Leave to amend should be liberally granted, but an amended complaint cannot allege

facts inconsistent with the challenged pleading. See id. at 296-97.

B. Sherman Act and Cartwright Act Claims

In their opposition to this motion, Plaintiffs state they "concede the problematic nature of their First and Second Causes of action in their First Amended Complaint for Sherman Act and ~Cartwright Act violations and will voluntarily dismiss these causes of action." Opposition at 1. PAL opposes Plaintiffs' attempt at voluntary dismissal, noting that Plaintiffs wish to dismiss without prejudice. PAL's objection is well-taken. Plaintiffs have been given an opportunity to amend, and rather than do so they wish to reserve the right to bring these causes of action again at a later date. They may not. Accordingly, the Court dismisses Plaintiffs' first and second causes of action against Defendants PAL and PALS without leave to amend.

C. California Unfair Practices Act

Plaintiffs' third cause of action, under the California Unfair Practices Act, Cal. Bus. & Prof. Code § 17000 et seq. fails to state a claim. As discussed in this Court's prior order dismissing the original complaint, this act "closely parallels the Robinson-Patman Act, and is based on the same policy considerations." G.H.I.I. v. MTS, Inc., 147 Cal. App. 3d 256, 271 (1983). Like the Robinson-Patman Act, a claim under this California law must allege an anti-competitive effect. Furthermore, "for competition to be unfair under the Act, the person engaging in the challenged practice must possess an intent to injure his competitors or destroy his competition." Doolev's Hardware Mart v. Food Giant Markets, Inc., 21 Cal. App. 3d 513, 517 (1971). The California unfair Practices Act "requires the plaintiff to prove not only Injury to a competitor, but, in addition, a tendency 'to destroy competition."' ABC International Traders, Inc. v. Matsushita Electric Corp., 14 Cal. 4th 1247, 1262 (1997) (citations omitted).

Plaintiffs again allege neither. As noted in this Court's)prior order, "Plaintiffs are not in competition with

PAL and thus any injury to them is not an injury to a competitor." Dismissal Order at 12. Plaintiffs allege that PAL is conspiring with PALS "so as to injure Defendant PALS' competitor or to destroy competition." FAC at 8. However, any agreement between PAL and PALS would be a vertical agreement, which the California Unfair Practices Act does not forbid. See Plotkin v. Tanner's Vacuums, 53 Cal. App. 3d 454, 458-59 (1975). In Plotkin, the California appellate court held that under the Unfair Practices Act a "Seller can lawfully discriminate in favor of one of his purchasers for the purpose of enabling that purchaser to meet his competition, so long as there is no intent on the part of the seller to prevent or destroy the competition of other sellers at his level." Id. at 459.

Because Plaintiffs are not at the same level of distribution as PAL, PAL cannot be held liable for such a vertical agreement with PAL, if one does exist.

Accordingly, Plaintiffs' claim against PAL under the California Unfair Practices Act is dismissed, without leave to amend. Defendant PALS joins in this motion; however, none of the arguments in the motion address PALS' specific situation or role with regard to any of the causes of action. Because the foregoing analysis relies on the fact that PAL and Plaintiffs are not direct competitors, this claim cannot be dismissed against PALS, a competitor of Plaintiff, under the same rationale. Accordingly, Plaintiffs' claim under the California Unfair Practices Act is dismissed only as it is brought against PAL.

D. Racketeer Influenced Corrupt Organizations Act (RICO)

Plaintiffs' fourth cause of action under the Racketeer Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, et seq., again fails. Plaintiffs allege that PAL used threats intended to extort Plaintiffs' compliance with PAL's "demands." Complaint ¶ 37. however, under both State and federal law, "extortion" is defined as "the obtaining of property from another" induced by wrongful use of force or fear, or under cover of official right among

others. See 18 U.S.C. § 1951(b) (2); Cal. Penal Code. § 518.

Plaintiffs allege that PAL unlawfully terminated plaintiffs' GSA agreement and unlawfully seized a bank account held in the name of plaintiff Sextant. However, the bank account PAL accessed was a standing letter of credit PAL held pursuant to the GSA agreement between the parties. See FAC, Exh. B. This property was not obtained by use of force, fear of force or other threat. Plaintiffs' allegations do not constitute extortion and do not fit within RICO's framework. Accordingly, Plaintiffs' RICO claim is dismissed, without leave to amend, as brought against both Defendants.

As they did at the hearing on the first motion to dismiss, Plaintiffs presented at the hearing on this motion an entirely new theory of their case, this time relating to tariff violations. At the hearing on this motion Plaintiffs appeared to assert that the illegal act upon which their RICO claim is based is the selling of tickets below the amount required by PAL's tariff. Because Plaintiffs have already been given an opportunity to amend their complaint, the Court declines to give them another.

E. Intentional Interference with Contractual Relations

Plaintiffs' fifth cause of action alleges that PAL's termination of Sextant's GSA status interference with Plaintiffs' agreements with their clients by terminating Sextant's ability to issue tickets for air travel on Philippine Airlines. Again, the contracts Plaintiffs allege were interfered with are the "numerous agreements" they have entered into since 1996 to provide tickets on Philippine Airlines and travel services. FAC at ¶¶ 34,35.

To state a claim for intentional interference with contractual relations, Plaintiffs must plead: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." LiMandri v. Judkins, 52 Cal. App. 4th 326, 343-

44 (1997) (citations omitted). In this Court's prior order dismissing the original complaint, the Court found that Plaintiffs had not plead a valid contract, finding specifically that a "unilateral promise to provide tickets is not a contract." Dismissal Order at 14. In their FAC, Plaintiffs have provided no further details regarding these alleged contracts that would support Plaintiffs' allegation that these contracts were anything other than unilateral promises. Accordingly, Plaintiffs' claim for intentional interference with contractual relations is dismissed without leave to amend. This cause of action appears to have been brought only against PAL and is thus dismissed in its entirety.

I. Intentional Interference with Prospective Economic Relations

Plaintiffs' sixth cause of action for intentional interference with prospective economic relations again also fails to state a claim. California courts have held that "a plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself.'" Della Penna v. Toyota Motor Sales USA, Inc., 11 Cal. 4th 376, 392-93 (1995) (citations omitted). The interference at issue here is PAL' S termination of Sextant's GSA status. As above and in this Court's prior order dismissing the original complaint, Plaintiffs have failed to allege in any of their other causes of action that PAL engaged in wrongful conduct in deciding to terminate Sextant's GSA status. They fail to do so in this cause of action as well. The only interference alleged is the act of terminating Sextant's GSA status and PAL's refusal to issue "sufficient" tickets to Plaintiffs under "reasonable terms or at competitive prices," that is, at the GSA rate. Because Plaintiffs have alleged no wrongful conduct on the part of PAL involved in its decision to terminate Sextant's GSA status, this claim fails. Accordingly it is dismissed without leave to amend. This claim also appears

to have been brought solely against PAL and thus is dismissed in its entirety.

J. Injunctive Relief

Plaintiffs' seventh cause of action is for "injunctive relief." As noted in this Court 's prior order, injunctive relief is a remedy, not a separate claim. Because Plaintiffs have failed to plead any of their claims sufficiently, they are not entitled t injunctive relief.

K. Declaratory Relief

Plaintiffs' eighth cause of action is for "declaratory relief." Again, this is a remedy, not & separate claim. Because Plaintiff s have failed to allege any of their other claims sufficiently, they are not entitled to declaratory relief.

CONCLUSION

For the foregoing reasons, PAL's motion is GRANTED (Docket No. 52). All Plaintiffs' claims against PAL are dismissed without leave to amend. The only claim remaining is Plaintiffs' third cause of action under the California Unfair Business Practices Act against Defendant PALS.

Dated: JUN -5 2001

IT IS SO ORDERED.
s/ Claudia Wilken
CLAUDIA WILKEN
United States District Judge

Copies mailed to counsel
is noted on the following page

United States District Court
for the
Northern District of California
June 5, 2001
: CERTIFICATE OF SERVICE * *

Case Number: 4: 00-cv- 03683
Sig Tyr Sig, Inc.
vs
Philippine Airlines

I, the undersigned, hereby certify that I am an employee in the office of the clerk, U.S. District Court, Northern District of California.

That on June 5, 2001, I SERVED a true and correct copy(ies) of the attached, by placing copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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s/ Richard W. Wieking, Clerk
By: _____
Deputy Clerk

[This document has been prepared in accordance with Supreme Court Rule 33]

FILED
JUN -5 2001
Richard Wieking, Clerk
U.S. District Court
Northern District of CA
Oakland

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, INC., and SEXTANT TRAVEL SERVICES Plaintiffs, v. PHILIPPINE AIRLINES, INCORPORATED, and PACIFIC AIR LEISURE SERVICES, Defendants.	No. C-00-03683-CW ORDER GRANTING PHILIPPINE AIRLINES, INC.'S MOTION FOR SANCTIONS

Defendant Philippine Airlines (PAL) moves under Rule 13. of the Federal Rules of Civil Procedure for sanctions against Plaintiffs. Plaintiffs oppose the motion. The matter ***was*** heard on April 27, 2001. Having considered all of the papers filed by the parties and oral argument on the motion, the Court GRANTS the motion (Docket No. 59).

BACKGROUND

Plaintiffs have brought suit against Defendants PAL and travel agency Pacific Air Leisure Services (PALS) alleging anti-trust violations and unfair business competition claims under both State and federal law and seeking injunctive and declaratory relief. Plaintiff Sig Tyr Sig (STS) is a California corporation and owner of Plaintiff Sextant Travel Services, (Sextant), a travel agency. PAL

filed for bankruptcy in 1998. Because of this, Plaintiffs had to seek special permission from the bankruptcy court to file this complaint. The bankruptcy court granted Plaintiffs permission, with the restriction that:

> No actions shall be brought
>
> i. for the enforcement of any claims or other duties, whether arising from contract or tort, where said cause of action accrued prior to the effective date of the Debtor's plan of reorganization approved by the Philippine Securities and Exchange Commission ("PSEC"), June 7, 1999, and/or
>
> ii. for the enforcement of the Movant's GSA agreement with Philippine Airlines, unless otherwise permitted by this court.

In re Philippine Air1ines, 98-32705 TC, Order Modifying Injunction in Ancillary Proceeding, filed October 5, 2000. Plaintiffs are further limited to seeking only injunctive, or declaratory relief and to filing only in the United States District Court for the Northern District of California.

Plaintiffs filed their original complaint on October 4, 2000, and sought a temporary restraining order (TRO). This Court denied Plaintiffs' motion for a TRO on October 19, 2000, finding that issuance of the TRO Plaintiffs sought would have violated the bankruptcy court's order and that Plaintiffs had failed to satisfy the requirements for injunctive relief. On February 2, 2001, upon a motion by Defendant PAL under Rule 12 (b)(6), this Court dismissed Plaintiffs' original complaint, with leave to amend. Order granting Philippine Airlines, Inc.'s Motion to Dismiss (February 2, 2001) (Dismissal Order). Again, the Court noted that the relief requested by Plaintiffs "essentially calls for this Court to enforce the GSA agreement, directly in contravention of the bankruptcy court' s order." Dismissal Order at 15. The Court dismissed all of Plaintiffs' claims, giving Plaintiffs leave to amend all but the Robinson-Patman Act claim, "provided that Plaintiffs can state legally cognizable claims." Id. In the Dismissal Order, the Court detailed the specific problems with each

of plaintiffs' causes of action and provided guidance as to how Plaintiffs might be able to cure their complaint's defects.

By separate order today, the Court dismisses Plaintiffs' first amended complaint (FAC) under Rule 12 (b)(6), without leave to amend. See Order Granting Philippine Airlines, Inc. 's Motion to Dismiss. The FAC suffers from exactly the same problems as the original complaint. Specifically, Plaintiffs do not have standing to bring their first and second claims under the Sherman Act and Cartwright Act against PAL and, since the filing of this motion to dismiss, plaintiffs seek to dismiss these claims voluntarily without prejudice; the third cause of action brought under the California Unfair Practices Act fails because it does not allege a tendency to destroy competition, Plaintiffs and PAL are not competitors, and vertical agreements are not forbidden; the fourth cause of action under the Racketeer Influenced and Corrupt Organizations Act (RICO) fails because Plaintiffs have failed to allege a predicate act; the fifth cause of action for intentional interference with contractual relations fails to allege a valid contract; and the sixth cause of action for intentional interference with prospective economic relations fails to allege that PAL'S interference was wrongful by some measure beyond the interference itself. These defects are identical to the defects that led to this Court's dismissal of plaintiffs' original

PAL now moves for sanctions under Rule 11 of the Federal Rules of Civil procedure. PAL asserts that Plaintiffs filed their first amended complaint both for the improper purpose of regaining their GSA status in contravention of the bankruptcy court's order and frivolously because Plaintiffs failed to cure the deficiencies the court had noted in the original complaint, the claims are not warranted by existing law, and plaintiffs' factual allegations lack evidentiary support.

DISCUSSION

A. Legal Standard

Federal Rule of Civil Procedure 11 requires a court to impose sanctions on an attorney, a represented party, or both, when the attorney has signed and submitted to the court a pleading, motion or other paper that is not, to the attorney's knowledge and belief after reasonable inquiry, "well grounded in fact" and "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." Fed. R. Civ. Proc. 11. An attorney's signature also constitutes a warranty that the paper is not "interposed for any improper purpose, such as to harass or to cause unnecessary delay."

The standard for determining whether a pleading, motion or other paper is either frivolous or interposed for an improper purpose is one of objective reasonableness at the time of the attorney's Signature. See Conn v. CSO Borjorquez, 967 P.2d 1418, 1421 (9th Cir. 1992) (citing Woodrum v. Woodward County Okla., 866 F.2d 1121, 1127 (9th Cir. 1989); Golden Eagle Dist. Corp. v. Burroughs Corp., 801 F.2d 1531, 3.538 (9th Cir. 1986)), reh'g denied en banc, 809 P.2d 584 (1987). In assessing whether the filing of a particular paper was frivolous under Rule 11, the court should not consider the ultimate failure on the merits or the subjective bad faith of the signer, but rather whether the position taken was "legally unreasonable" or "without factual foundation." Zalvidar v City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986).

B. Rule ii(b)(1): Improper Purpose

As discussed above, because PAL filed for bankruptcy in 1998, Plaintiffs, had to seek special permission from the bankruptcy court to file this complaint, tinder the bankruptcy Court's order:

> No actions shall be brought
>
> ii. for the enforcement of the Movant's GSA agreement with Philippine Airlines, unless otherwise permitted by this court.

In re Philippine Airlines, 98-32705 TC, Order Modifying Injunction in Ancillary Proceeding, filed October 5, 2000.

Furthermore, Plaintiff may seek only injunctive or declaratory relief.

Like the original complaint, the FAC seeks injunctive relief:

(a) Enjoining DEFENDANT PA(L] from denying PLAINTIFFS' access to Philippine Airlines tickets on the same terms and conditions as GSA's [sic] generally; [and]

(b) Enjoining DEFENDANT PA(L] from price discrimination in the sale of its tickets to PLAINTIFFS, including payment of any commissions, rebates, or other incentive normally paid to GSA's (sic] generally...

among other relief. In other words, Plaintiffs seek enforcement of the GSA agreement.

Not only have Plaintiffs provided no support for their contention that they are entitled to the rights and benefits of GSA status, seeking such relief specifically defies' the bankruptcy court's order. If this was not clear to Plaintiffs when they filed their motion for a temporary restraining order (TRO) and original complaint, it should have been after this Court's orders denying 5he TRO and dismissing the original complaint. See Order Denying plaintiffs' Motion for A Temporary Injunction at 2 ("Plaintiffs are trying to enforce the GSA agreement, which was specifically barred by the Bankruptcy 's Order of October 5"); Dismissal Order at 15 ("the relief requested essentially calls for this Court to enforce the GSA agreement, directly in contravention of the bankruptcy court's order").

Seeking relief from this Court after having been specifically prohibited from seeking such relief by another court is improper and sanctionable under Rule 11. See Fed. R. Civ. Proc. 11(b)(1). Plaintiffs have been given ample notice of the impropriety of seeking such relief. Accordingly, the Court grants sanctions against Plaintiffs.

C. Rule 11 (b) (2) and (3)

PAL asserts that Plaintiffs' claims and legal contentions are not "warranted by existing law or by a

nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." See Fed. R. Civ. Proc. 11(b) (2). Because Plaintiffs' claims in the FAC are dismissed under Rule 12 (b) (6) for the same reasons they were dismissed in the original complaint, PAL's assertion is well-taken. The order dismissing the original complaint detailed the specific defects of the original complaint. At the hearing on the motion to dismiss the original complaint, the Court warned Plaintiffs that if they filed an amended complaint that was subject to the same infirmities as the original complaint, the Court would consider sanctions for unnecessarily and vexatiously continuing the proceedings. Despite this explicit warning, Plaintiffs have done just that. For these reasons as well, the Court grants sanctions against P1aintiffs.

CONCLUSION

For the foregoing reasons, PAL's motion is GRANTED (Docket No. 59). PAL shall file an itemized bill within two weeks of the date of this order. Plaintiffs may respond only with respect to the reasonableness of the bill two weeks thereafter and PAL may reply a week later. The Court will decide the amount of sanctions and their dispersal on the papers.

IT IS SO ORDERED.

Dated: JUN -5 2001

s/_____

CLAUDIA WILKEN
United States District Judge

Copies mailed to counsel
as noted on the following page

United States District Court
for the
Northern District of California
June 5, 2001
: CERTIFICATE OF SERVICE * *

Case Number: 4: 00-cv- 03683
Sig Tyr Sig, Inc.
vs
Philippine Airlines

I, the undersigned, hereby certify that I am an employee in the office of the clerk, U.S. District Court, Northern District of California.

That on June 5, 2001, I SERVED a true and correct copy(ies) of the attached, by placing copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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s/ Richard W. Wieking, Clerk
By: _____
Deputy Clerk

[This document has been prepared in accordance with Supreme Court Rule 33]

FILED
AUG 21 2001
Richard Wieking, Clerk
U.S. District Court
Northern District of CA
Oakland

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, INC., and SEXTANT TRAVEL SERVICES
Plaintiffs,
v.
PHILIPPINE AIRLINES, INCORPORATED, and PACIFIC AIR LEISURE SERVICES,
Defendants.

No. C-00-03683-CW

ORDER AWARDING SANCTIONS

On June 5, 2001, the Court granted Defendant Philippine Airlines (PAL)'s motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure. See Order Granting Philippine Airlines, Inc.'s Motion for Sanctions, June 5, 2001 (Sanctions Order). In the Sanctions Order, the Court requested further briefing as to the amount of sanctions to be granted. The Court ordered PAL to file an itemized bill and Plaintiffs to respond only as to the reasonableness of the bill. Having considered all of the papers filed by the parties, the Court GRANTS sanctions in the amount of $60,000.00. This amount shall be apportioned between: (1) Plaintiffs, who shall be liable jointly and severally liable for $40,000.00; and (2) Plaintiffs' counsel of record, Alexander Anolik and Anthony J. Palik,

who shall each be liable for $10,000.00.

In the Sanctions Order, the Court found that Plaintiffs were liable for sanctions because; (1) their application for a temporary restraining order and their complaint had been filed in direct contravention of the Bankruptcy Court's Order, which prohibited them from seeking to enforce the GSA agreement; and (2) the first amended complaint suffered from the exact same infirmities as their original complaint, despite the Court's warning to Plaintiffs that if they filed an amended complaint that was subject to the same infirmities as the original complaint, the Court would consider sanctions. See Sanctions Order at 5-7. Because the Court found that Plaintiffs were liable under Rule 11 (b)(1), (2), and (3), Plaintiffs' counsel is also liable because monetary sanctions may not be awarded against a represented party for a violation of Rule 11 (b)(2). See Rule 11(c) (2) (A).

In their original request for sanctions, PAL requested reimbursement for all of the fees and costs they had expended in defending this action -- currently, over $250,000.00. PAL now requests that the Court award sanctions in the amount of $150,562.48. This is the amount of fees and costs PAL has spent on PAL's first motion to dismiss, second motion to dismiss, motion for sanctions, and in making the billing determinations and calculations and drafting the supporting declaration for this request. PAL has excluded fees and costs related to Plaintiffs' notion for a temporary restraining order, as well as other work unrelated to the above motions and billing.

After considering the facts and circumstances of this litigation, the motions at issue, and the conduct of the parties and their counsel, the Court, in its discretion, finds that $60,000.00 is a reasonable amount of sanctions to impose. In the Order Denying Plaintiffs' Motion for a Temporary Injunction., the Court found that "Plaintiffs are trying to enforce the GSA agreement, which was specifically barred by the Bankruptcy Court's order of October 5." Thus, Plaintiffs were on notice as of October,

2000, that their complaint sought an improper objective -- namely, enforcement of the GSA agreement. Despite the Court's explicit admonition that such a purpose was improper, Plaintiffs continued to prosecute this action, defending against PAL's first motion to dismiss, filing a first amended complaint with the same infirmities as the original., and defending against PAL's second motion to dismiss. Furthermore, although Plaintiffs' first amended complaint suffered from the same infirmities as the original complaint, Plaintiffs based the allegations in the first amended complaint on [illegible] [a] new set of facts and theories.

For the foregoing reasons and the reasons set forth in the Sanctions Order, the Court awards sanctions in the amount of $60,000.00. The sanctions are apportioned as follows: Plaintiffs shall be jointly and severally liable for $40,000.00; Plaintiffs' counsel of record, Alexander Anolik and Anthony J. Palik, shall each be liable for $10,000.00. Because this is the final issue to be decided in this action, judgment shall enter accordingly. The clerk shall close the file.

IT IS SO ORDERED.

Dated: 8/2/01

s/ Claudia Wilken

CLAUDIAA WILKEN
United States District Judge

Copies mailed to counsel
as noted on the following page

PROOF OF SERVICE BY MAIL

I, Lisa R. Clark, declare as follows:

I am employed at the United States District Court, whose address is 1301 Clay Street, Suite 400S, Oakland, California 94612. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service. I am over the age of eighteen years and not a party to this action.

On August 21, 2001, I served the following:

ORDER AWARDING SANCTIONS

on the below parties in the action by (1) placing true copies thereof in sealed envelopes, addressed as shown, for collection and mailing pursuant to the ordinary business practice of this office.

Roderick McLeod, Esq.
Brobeck, Phleger & Harrison
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on August 21, 2001.

s/ Lisa R. Clark
Lisa R. Clark

[This document has been prepared in accordance with Supreme Court Rule 33]

FILED
AUG 21 2001
Richard Wieking, Clerk
U.S. District Court
Northern District of CA
Oakland

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIG TYR SIG, INC., and SEXTANT TRAVEL SERVICES
Plaintiffs,
v.
PHILIPPINE AIRLINES, INCORPORATED, and PACIFIC AIR LEISURE SERVICES,
Defendants.

No. C-00-03683-CW

JUDGMENT

This case came on for decision before the Court, the Honorable Claudia Wilken, United States District Judge, presiding, and the Court having duly rendered its decision as set forth in the Court's Order filed on June 5, 2001.

IT IS HEREBY ORDERED AND ADJUDGED:

That judgment is entered in favor of defendant Philippine Airlines, Inc., which shall recover its costs of action from Plaintiffs. Plaintiffs have dismissed with prejudice their claims against Pacific Air Leisure Services.

Dated: 8/21/01

s/ Claudia Wilken
CALUDIA WILKEN
United States District Judge

Copies mailed to counsel as noted on the following page

PROOF OF SERVICE BY MAIL

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On August 21, 2001, I served the following:

JUDGEMENT

on the below parties in the action by (1) placing true copies thereof in sealed envelopes, addressed as shown, for collection and mailing pursuant to the ordinary business practice of this office.

Roderick McLeod, Esq.
Brobeck, Phleger & Harrison
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on August 21, 2001.

s/Lisa R. Clark
Lisa R. Clark

ALL-PURPOSE PROOF OF SERVICE

Sig Tyr Sig, Inc. Philippine Airlines, Inc.

Case No. C003683 CW

I, Dolores M. Rivera, declare:

I am and was at the time of service mentioned in this declaration, employed in the county of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Brobeck, Phleger & Harrison LLP, Spear Street tower, One Market, San Francisco, California 94105.

On August 23, 2001, I served a copy(ies) of the following document(s):

NOTICE OF ENTRY OF ORDER AWARDING SANCTIONS AND JUDGMENT

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Attorney	**Party(ies) Served**	**Method of Service**
Alexander Anolik, Jordan A. Lavinsky, Esq Alexander Anolik, PC 2107 Van Ness Avenue Suite 200 San Francisco, CA 94109	Plaintiff	U.S. Mail
Rene C. Fernando, Esq. 255 N. Market Street Suite 265 San Jose, CA 95110	Defendant Pacific Air Leisure Services	U. S. Mail
Anthony J. Palik, Esq. Law Offices of Anthony J. Palik 801 Alhambra Bl. #3 Sacramento, CA 95816	Plaintiff	U.S. Mail
Michael A. Isaacs, Esq. Sandi Meneely, Esq. Luce, Forward, Hamilton & Scripps 121 Spear St., Suite 200	Trustee	U.S. Mail

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ALL-PURPOSE PROOF OF SERVICE

Sig Tyr Sig, Inc. Philippine Airlines, Inc.

Case No. C003683 CW

X (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Brobeck, Phleger & Harrison LLP, San Francisco, California. I am readily familiar with Brobeck, Phleger & Harrison LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

____ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Brobeck, Phleger & Harrison LLP, San Francisco, California. I am readily familiar with Brobeck, Phleger & Harrison LLP's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with the delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.

____ (BY PERSONAL SERVICE) I caused the envelope to be delivered by hand to the addressee(s) noted above. I delivered to an authorized courier or driver of Professional Messengers Service, office located at Brobeck, Phleger & Harrison, to be delivered on the same date.

[X] (BY FACSIMILE) I caused to be transmitted by facsimile machine (number of sending facsimile machine is (415) 442-1010) by sending the documents(s) to:

Rene C. Fernando, Esq. at facsimile number (408) 971-3226

Alexander Anolik, Esq./Jordan Lavinsky, Esq. at facsimile number (415) 673-3548

Anthony J. Palik, Esq. at facsimile number (916) 444-3008

Sandi J. Meneely, Esq. at facsimile number (415) 356-4610

I declare under penalty of perjury under the laws of the State of California and the United States of America that I am employed in the office of a member of the bar of this court, at whose direction this service was made, and that this declaration was executed on August 23, 2001, at San Francisco, California.

s/Dolores M. Rivera

Dolores M. Rivera

[This document has been prepared in accordance with Supreme Court Rule 33.]

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Attorney for Petitioner

FILED
SEP 18 2001
Richard Wieking, Clerk
U.S. District Court
Northern District of CA
Oakland

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIG TYP [sic] SIG, INC., a California Corporation and SEXTANT TRAVEL SERVICES
Plaintiff
vs.
PHILIPPINE AIRLINES, Inc., a Philippine Corporation, PACIFIC AIR LEISURE SERVICES, a California corporation and Does 1 thru 99,
Respondent.

No. C-00-03683-CW

NOTICE OF APPEAL

Alexander Anolik and Anthony Palik, Attorneys for the above named Plaintiffs, present this Notice of Appeal of the Judgment entered in this case on 21 August 2001. This Notice is limited only to that aspect of the Judgment which includes and Order sanctioning Attorneys Anolik and Palik. It does not include any aspect of the Judgment as it applies to the Plaintiffs.

Dated: 4 September 2001

s/James Dirks
James Dirks, Attorney for
Appellants Attorneys Anolik and Palik

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives

of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 12. Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on Pleadings

(a) When Presented.

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint, or

(B) if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(3)(A) The United States, an agency of the United States, or an officer or employee of the United States sued in an official capacity, shall serve an answer to the complaint or cross-claim-- or a reply to a counterclaim--within 60 days after the United States attorney is served with the pleading asserting the claim.

(B) An officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States shall serve an answer to the complaint or cross- claim--or a reply to a counterclaim--within 60 days after service on the officer or employee, or service on the United States attorney, whichever is later.

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not

excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the

party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.